

FUTURE TRENDS IN STATE COURTS

2011

Special Focus on Access to Justice



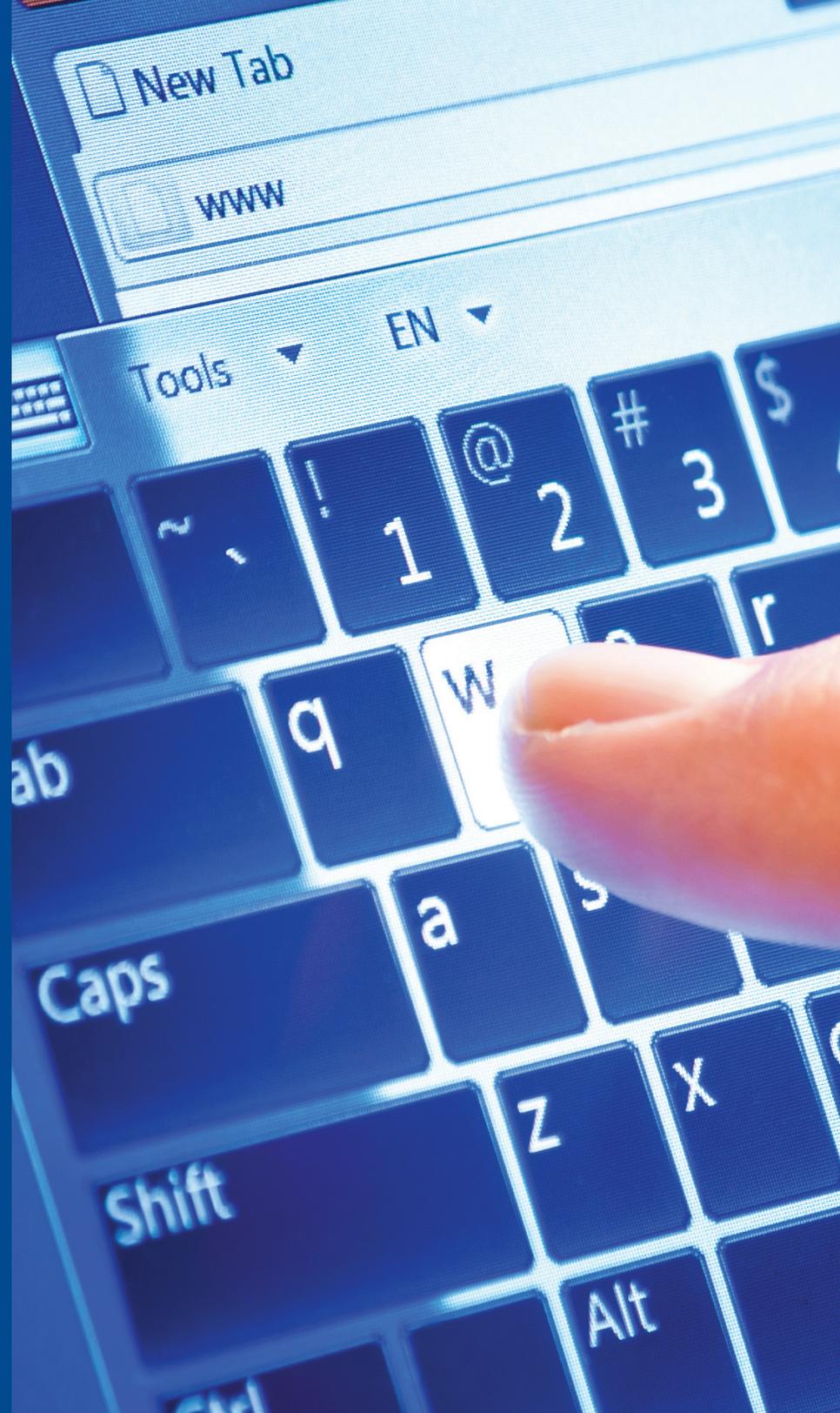
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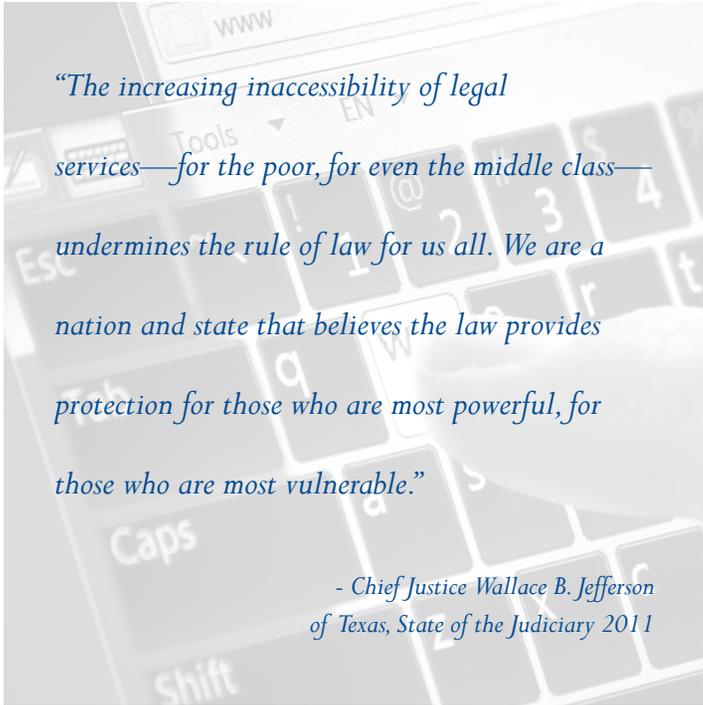
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“The increasing inaccessibility of legal services—for the poor, for even the middle class—undermines the rule of law for us all. We are a nation and state that believes the law provides protection for those who are most powerful, for those who are most vulnerable.”

*- Chief Justice Wallace B. Jefferson
of Texas, State of the Judiciary 2011*

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This year, it is with both sadness and fond memories that the editors offer a farewell salute to a beloved colleague: the late Chris Crawford. Tirelessly dedicated to the continual improvement of court administration, Chris was never without a kind word, encouraging demeanor, or inspiring message for those who work in the courts. He selflessly shared his knowledge and expertise, relentlessly urging others to embrace their own talents and abilities for the benefit of our nation's courts. A true friend, mentor, and inspiration to countless individuals, Chris will be dearly missed.

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Defining a Trend for the Purposes of this Publication

Future Trends in State Courts 2011 takes a somewhat broad view of what a trend is. Trends require us to determine first which is working; how it started; how it is catching on; and only then how we anticipate it will spread in the future. Since proven practices are much more likely to be adopted and to spread than the very latest innovations, the reader will find proven practices being highlighted as “trends” in this report. The reader will find many of the articles presented here focusing on those “trends” that may represent innovations or best practices that would benefit courts that have not tried them yet.

We acknowledge and applaud the members of the *Future Trends in State Courts* Review Board for the generous contributions of their time and subject-matter expertise.

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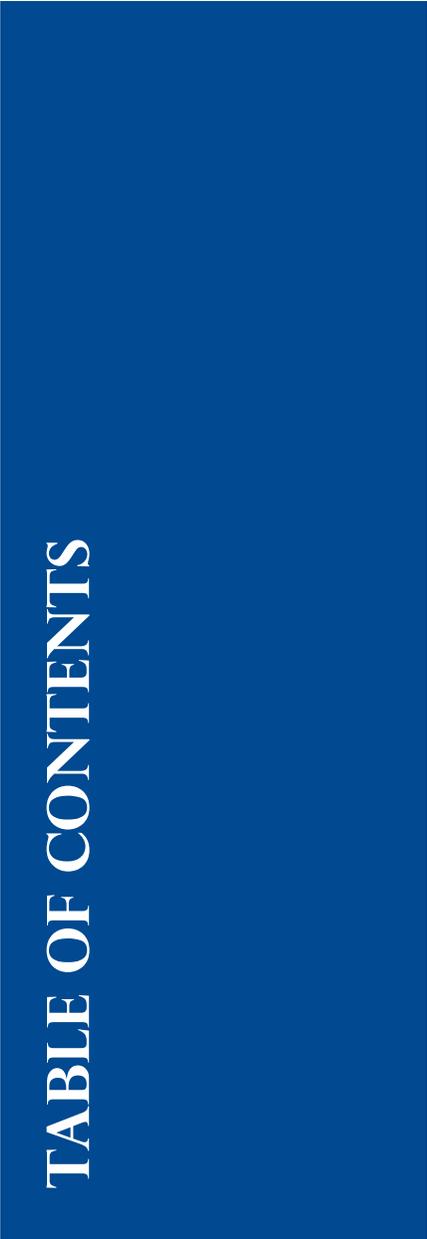


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PREFACE

Mary Campbell McQueen

President, National Center for State Courts

The demand for courts to provide more information about their cases and their operations is expanding. Technology is making our world “smaller” and forcing the courts to wrestle with new issues, such as electronic access to court records that could contain personal, potentially damaging information about litigants; the increasing use of personal electronic devices, such as smart phones, by jurors, journalists, and spectators; and court-related blogging—sometimes positive, sometimes negative.

How courts are tackling access-related issues is the focus of *Future Trends in State Courts 2011*. This year’s edition examines how courts are coping with increasing demands for public access through:

- Technology
- Social Media
- Specialized Courts and Services
- Special Programs

This year’s articles discuss what courts are doing to improve public access, to make court operations easier to understand, and to help litigants, lawyers, and judges do their jobs better. For example, what is the best technology to use when presenting evidence to a jury? How are social media, such as Facebook and Twitter, affecting court operations—and can courts effectively use social media to educate the public?

How does a court control the release of news when everyone with a smart phone sees himself or herself as an “iReporter”? What is the future for problem-solving courts, and what must courts do to cope with vulnerable populations, such as the elderly, the mentally ill, and foster children, in an era of shrinking resources? These are just some of the questions addressed in this year’s book, which concludes with a look at the future of justice.

This era of “instant” access can be daunting to our justice system. I hope that *Future Trends in State Courts 2011* will help to put the forces affecting our society, and hence our courts, into perspective, and that sharing how other courts are working with these forces will inform your own court’s practices.

KEYNOTE ADDRESS

“Ours is supposed to be a system that levels the playing field by meting out justice without regard to wealth or class or race, a system that lives up to the promise emblazoned in marble on our Supreme Court, ‘EQUAL JUSTICE UNDER LAW.’”

*Lawrence H. Tribe, Annual Meeting of the Conference of Chief Justices and Conference of State Court Administrators
July 26, 2010, Vail, Colorado*

KEYNOTE ADDRESS: ANNUAL MEETING OF THE CONFERENCE OF CHIEF JUSTICES AND CONFERENCE OF STATE COURT ADMINISTRATORS, JULY 26, 2010, VAIL, COLORADO

Laurence H. Tribe

Senior Counselor for Access to Justice, U.S. Department of Justice

One of the things John Kennedy used to say was that “everyone can make a difference—and everyone should try.” For this distinguished audience, particularly the chief justices of our state courts, that’s an understatement. For you know better than anyone—and so many of you have written cogently on this very subject—that our justice system needs fixing. It is a system in crisis. My purpose today is not to regale you with Doomsday stories—although I may end up telling you one or two. My purpose is to challenge you to take up the task of improving our system, committing yourselves to fixing it. No one is better positioned than you to improve it. You are, quite literally, “Justice” – it is both your honorable title and your most solemn obligation—ensuring that justice



is truly done in your systems. Like the Prophet Isaiah, you have touched the burning coal, you have the vision, you have the knowledge, and perhaps most importantly, your voices command the respect which will drive true reform. Ask yourselves, *if not you, who?*

After spending four decades teaching and writing about our nation’s remarkable Constitution and the legal system built on its foundation, I welcome the opportunity finally to work in a venue where so much that I

have written and studied can find a practical outlet in the transformation of everyday life for ordinary people. Though I don’t have anything close to the tool kit or the skills each of you has, I feel an obligation to do what I can to “fix” things. And I am thoroughly convinced that our system of justice can be made better—fairer, more humane, more efficient, more just. My goal—and that of the administration—is to partner with you in this most worthy of endeavors.

My long life in the relatively quiet groves of academe, in the tree-lined streets of Cambridge, Massachusetts, was a calm one compared to life inside the Beltway. The perspective from that privileged perch was shattered when I began to see the broader view from inside the Justice Department, a view that reaches into every nook and cranny of our country. In my new job as Senior Counselor for Access to Justice, I have come face to face with the anxiety and desperation of ordinary citizens, who look to our legal system for their fair share of decent treatment.

Though only five months into the job, I still view with awe the sign over the door to my office that reads, “Access to Justice.” More than a few folks who have come to visit have paused to have their pictures taken—not with me, mind you, but with that sign. But even after these few months, my staff and I already sense the danger of unrealistic expectations. We worry, as do many expert observers, that the system is too badly broken in too many ways to be susceptible to any “quick fix,” our state and federal budgets too strained to provide the resources so desperately needed, injustice too deeply woven into the system’s very structure for piecemeal reforms to make much of a dent. Or is it?

And I am thoroughly convinced that our system of justice can be made better—fairer, more humane, more efficient, more just. My goal—and that of the administration—is to partner with you in this most worthy of endeavors.

Ours is supposed to be a system that levels the playing field by meting out justice without regard to wealth or class or race, a system that lives up to the promise emblazoned in marble on our Supreme Court, “EQUAL JUSTICE UNDER LAW.” But as you know all too well, far too many of our citizens find instead a system in which the deck is stacked in favor of those who already have the most: in favor of the wealthy and against those already disadvantaged or victimized by the more powerful. There’s no reason to mince words: Not only the poor but members of the shrinking middle class find a system that is confusing, difficult to navigate, challenging to the point of inaccessibility for anybody who can’t afford the best lawyers, and ridiculously expensive for those in a position to pay the going rate.

Consider the Burger family in Michigan, a state that permits non-judicial foreclosure. The Burgers bought a four-bedroom bungalow in 1997 for just under \$39,000. In January 2009, they inadvertently sent a money order that was 7 cents short of what they owed, and they were late making February’s payment as well. They caught up by April, which was amazing considering that they lost their 10-month-old daughter in a household accident that same month. According to the family, the bank sought to foreclose anyway, giving them a choice: Pay \$8,390 to reinstate the mortgage or lose their home. The Burgers didn’t have the money, couldn’t afford a lawyer, and given Michigan’s laws weren’t afforded any court intervention or oversight, so they lost the only house that their four living children, all 12 years old and younger, had ever known.

But the unredeemed imbalance of power and wealth are not the only viruses infecting our legal system. Equally detrimental, though less visible, is the hydra-headed monster of too many people to be served effectively and—for lack of a better word to describe it—the punitive urge, an appetite for imprisonment that ignores the veritable mountain of evidence which shows that alternatives to incarceration are often more effective at reducing recidivism while also less costly. All too often, the systems that rely on lengthy incarceration as the only available criminal sanction suffer from crushing caseloads and an inability or, I hate to say, unwillingness to provide the legal assistance needed to provide

meaningful, adequate defense. Though neither of these forces necessarily originates from any ill intent, their combination creates waste, havoc, and confusion and leaves the system weakened and the participants on both sides of the bench disillusioned and discouraged.

Nobody who works within the legal system enjoys confronting these problems—they cast a dark shadow over a system in which we deeply believe and to which we have devoted our careers. But confront them we must if we are to combat them and redress their pernicious effects.

I know all too well that my fellow academics just LOVE to study the federal judicial system and its doctrinal and jurisdictional intricacies. I don’t exempt myself from that description. But the amount of energy devoted to the study of federal courts masks a fundamental truth: It is YOU who are the center of American law and American justice—justice *or the lack of it*.

More than 95 percent of all cases in this country are filed in state courts. Just to put things into perspective, it helps to recall that slightly under 280,000 civil cases of all kinds were commenced in federal district courts in 2007—compared to nearly 18 *million* civil cases in the courts of our 50 states. The federal system saw over 66,000 new criminal cases filed in 2007, a substantial number to be sure, but nowhere near the 21 *million plus* that originated in your state courts.

In the face of this staggering burden, the problems facing our state judicial systems can only be described as deplorable. The court systems in 28 states had hiring freezes in FY 2010, 13 states froze court staff salaries, six states mandated court furloughs, six states closed courtrooms—one day each month for all California courts. Los Angeles County alone has lost over \$130 million

Los Angeles County alone has lost over \$130 million of its court budget, and hundreds and even thousands of court employees are being laid off from California to Florida to New Hampshire.

of its court budget, and hundreds and even thousands of court employees are being laid off from California to Florida to New Hampshire. And judicial pay, adjusted for inflation, has *fallen* nearly 24 percent over the past 40 years while the average U.S. worker's wages have *risen* nearly 18 percent.

Because of bulging criminal dockets and huge *pro se* backlogs, all made worse by the faltering economy, it's becoming increasingly difficult for business litigants and others who are embroiled in civil disputes ranging from consumer fraud to family matters to get courtrooms for trial or to have trials, especially jury trials, scheduled in a timely way—often, they wait years to get their day in court. It was Clause 40 of Magna Charta that proclaimed, “To no one will we sell, to no one will we refuse or delay, right or justice.” Justice that must depend on the purse, or justice so long delayed that it is in essence denied, does not deserve the name.

For the privileged litigants who can afford it, the natural response to a denial of justice in the public courtrooms of our nation is to take their business to private judges and mediators, operating outside the watchful gaze of the public and beyond the effective reach of the rule of law. The harm that results from that private response is experienced as well in the public sphere, where adjudication conducted out of the public's sight mystifies instead of educating, depriving democracy of one of its essential wellsprings, that of *seeing* justice done.

For those litigants who *cannot* afford that private alternative, the natural response to a denial of public justice is more troublesome still. They must either suffer in alienated silence or take the law into their own hands. Judy Norman, the North Carolina woman whose story and trial are studied by many first-year students in their criminal law courses, tragically exemplifies that response. For 25 years, Ms. Norman was psychologically and physically abused, beaten by her husband, and forced into prostitution. The state rebuffed her attempts to seek counseling and welfare benefits, and the police refused to take action unless she filed a formal complaint, which she was too afraid to do. Because she thought her husband was “invulnerable to the law,” she finally shot and killed him in his sleep.

I would simply ask: Who among us is willing simply to wait while the public justice gap in America threatens to grow until the contrast between our system of justice and that in many other nations becomes ever harder to discern?

The human-rights activist Gary Haugen, founder and director of International Justice Mission, has documented the way in which wealthy and powerful elites in third-world countries with dysfunctional public justice systems often circumvent those systems with workarounds that submit their controversies to private dispute resolution, leaving the poor, who of course can afford no such recourse, to depend on the clogged and at times corrupt public courts. That leads to a vicious cycle of cynicism and disaffection in which the system's democratic legitimacy, the very foundation of its capacity to articulate and enforce the rule of law, disintegrates. And that in turn leads increasing numbers to flout the law, to resort to self-help, or to give up altogether, eroding the traditional claim of the judicial branch to a share of public resources sufficient to perform its mission with competence and integrity. In the meantime, the powerful constituencies that once treated the public courts as their arbiters of last resort develop a diminishing stake in keeping the public judicial stem afloat.

I hasten to add that this picture of what sometimes happens abroad stands in stark contrast to the judicial systems over which you preside. All of you—all of us—have ample reason to be proud of the integrity and efficacy of American courts, both state and federal. But to say that is not to condone indifference to the early warnings of disintegration to which some of you have called sober attention. It would be foolhardy not to heed those warnings, shortsighted to celebrate our successes without acknowledging—and committing to combat—our failures. I would simply ask: Who among us is willing simply to wait while the public justice gap in America threatens to grow until the contrast between our system of justice and that in many other nations becomes ever harder to discern?

The magnitude of the problem tempts one to reach for sweeping solutions in some unifying vision of “access to justice” writ large, but the diverse and multifaceted character of the problem resists reduction to any grand and fully coherent theme conveniently captured in a simple slogan. Once one recognizes the perils of rigidly idealistic thinking—something that has from time to time plagued everyone in our “access to justice” office—one comes to a recognition that what is perhaps needed more than an inspiring but abstract and utopian call for a thousand-fold increase in funding is a series of tangible, achievable reforms that will make state courts better at what they do and more engaged in making law and legal remedies accessible to all. And central to any such reinvigoration of the state judiciary is the assumption of a leadership role by those at the pinnacle of the state judicial systems: *YOU. As I said at the outset, if not you, who?*

I will propose three sets of tangible, achievable reforms this afternoon; but before I do, let me address an overriding concern that many express with the very idea of active judicial leadership. It is that judges should be neutrals, not participants. They should be objective. They need to remain above the fray. People don’t agree on a definition of “judicial activism” but, in a riff on Potter Stewart’s definition of hard core pornography, they “know it when they see it.” And, if they affix that label to it, they know they don’t like it. But whatever one’s notion of impermissible approaches to judging, there is a basic and often ignored difference between judicial neutrality and judicial *inactivity*, between judicial objectivity and judicial *passivity*. Perhaps the greatest image we can conjure of a wise judge is that of Solomon. We all remember his creative pre-DNA-test solution to the problem of adjudicating the contested issue of maternity between two women making competing parental claims to the same infant. The wise king’s proposed solution, which he sprang on the women when he suggested splitting the baby in two while he watched the reactions of both claimants to motherhood, was the very essence of neutrality and objectivity. But it was hardly passive! It was as active as all get-out. Solomon’s wisdom sprang from making justice an active verb.

If some of the things I’ll be asking of you, in your capacity as chief justices and as occupants of the bully pulpits in your respective states, will resemble judicial “activism,” they will bear no resemblance to activism of an ideological stripe, right or left, but will bear the “activist” label only to the degree that activism is understood as the opposite of passivity—a passivity that disclaims responsibility for the systems of which you are, after all, the stewards.

One inspiring example of the “good” judicial activism I’ve just described is taking place in Philadelphia, where a trial judge named Annette Rizzo launched an innovative mortgage mediation project. Judge Rizzo was initially asked by a particularly progressive sheriff to issue an area-wide moratorium on foreclosure sales, which were ravaging Philadelphia neighborhoods. Judge Rizzo, taking a leaf out of John Marshall’s book, declined to issue that specific relief—which would undoubtedly have garnered her the “bad” judicial activist label—and instead took the opportunity literally to restructure the foreclosure system in Philadelphia. She issued an order that no foreclosure sale could win judicial approval before the lender had at least entered into good-faith mediation with the homeowner, aided by a state-funded housing counselor. The mayor’s office got on board, the relevant stakeholders (including the lenders) offered input, and the program was off and running. My staff and I paid a visit to Judge Rizzo’s courtroom and witnessed the program, which has successfully kept hundreds of families in their homes and permitted many others to achieve more dignified and graceful exits than would otherwise have been possible. And, in case you’re dubious that Judge Rizzo’s efforts could take hold in your backyard, you should know that jurisdictions from Orange County, California to Boston to Louisville, in judicial- and non-judicial-foreclosure states alike, are implementing similar programs.

Important reform efforts have also been initiated by state supreme court justices, as with the significant indigent defense reform effort spurred by the Nevada Supreme Court, which issued an order in 2008 calling for a completely state-funded Public Defender system and a permanent statewide commission on indigent defense. Although the Nevada reform effort is ongoing and there is still much work to be done, that state’s high court heroically chose to address

systemic deficiencies in its system for fulfilling the obligation imposed by the Sixth Amendment under *Gideon*—and the promise of equal justice made by *Gideon*—without being asked to do so in a specific case. Of course, once asked to address the question of systemic deprivation of the protections that *Gideon* affords, it takes just as heroic a court to answer the call, as the New York Court of Appeals recently did under the visionary leadership of its Chief, Jonathan Lippman, in permitting the plaintiffs’ lawsuit to go forward in *Hurrell-Harring v. State of New York*.

I would urge every state’s highest court, led by every state’s chief justice, to establish an exploratory committee or task force with the goal of surveying the performance and evaluating the adequacy of the way your state is discharging its federal constitutional duty under *Gideon*. Judicial leadership of the sort shown in Nevada and New York and elsewhere is necessary if *Gideon*’s promise is to become more than what Robert Jackson once called a “promise to the ear to be broken to the hope, like a munificent bequest in a pauper’s will.”

Now, without further ado, let me turn to the first of the three particular areas of reform that I intend to discuss with you today: juvenile justice.

I want all of you here to ensure that what happened in Luzerne County, Pennsylvania between 2003 and 2008 never happens again. As I imagine you all know, thousands of kids waived counsel and accepted pleas—in a system designed so that judges could receive kickbacks for placing children in a residential facility. The complaint alleged that none of the youth without counsel who appeared before a judge and pleaded guilty even had a colloquy about the waiver of counsel or about pleading guilty. They went to a hearing and in a matter of moments disappeared in shackles and handcuffs, for crimes as minor as stealing a four-ounce jar of nutmeg. Now of course the Pennsylvania Supreme Court vacated some 6,500 adjudications and consent decrees, expunged the convictions, and dismissed all cases with prejudice. But the damage to those kids cannot be undone. You can make sure that in America, young people enjoy the fundamental right to counsel that they are guaranteed under *In re Gault*. The primary goal of the juveniles and their attorneys in

You can make sure that in America, young people enjoy the fundamental right to counsel that they are guaranteed under In re Gault.

Luzerne County was relief in their individual cases, but those of you in this room can decide to use the lessons from that case to institute systemic change, just as Annette Rizzo took it upon herself to do in Philadelphia.

When we were juveniles, there was an ethos that everyone was out to help the kids, so issues like waiver of counsel

weren’t really important. Today, confronted with situations like Luzerne County, we know better. The consequences of juvenile adjudications are serious and long term; the lack of representation can reshape a child’s entire life. Being found guilty can mean expulsion from school, exclusion from the job market, eviction from public housing, and exclusion from the opportunity to enlist in the military. It can affect immigration status. This is serious stuff.

And because it is so very serious, it’s critical that you as our state chief justices play a major leadership role. You can begin by protecting the right to counsel. The best way to do that is to prohibit the judicial acceptance of counsel waivers in your state by juveniles who have not at least received the advice of an attorney about their options and about the consequences of waiving such an important right. Many of your state supreme courts have adopted such a rule, including several in the past few years. A few of your states do not accept a waiver of counsel from juveniles under any circumstances. Every jurisdiction in the country should adopt a rule that at the very least requires consultation with an attorney prior to waiver of counsel.

We know from careful national studies that juveniles who lack counsel are much more likely to plead guilty without offering any defense or mitigating evidence. And without any credible defense, those young people are far more likely to end up in detention or incarceration, where they’re much more likely to be exposed to assault or sexual abuse, much more vulnerable to suicide, and far more likely to commit further crimes after their release. You, as our chief

The changes you can bring about will affect these young people for the rest of their lives. And you could save not only their lives but the lives of those they might otherwise endanger years into the future.

Justices, can make a difference. Every child in delinquency proceedings should have access to justice via a right to counsel at every important step of the way: before a judicial determination regarding detention, and during probation interviews, pre-trial motions and hearings, adjudications and dispositions, determination of placement, and appeals. The changes you can bring about will affect these young people for the rest of their lives. And you could save not only their lives but the lives of those they might otherwise endanger years into the future.

Beyond waiver, it is time for the states to focus on the entire juvenile system, which has changed so much and yet receives so little systematic attention. You could establish a Blue Ribbon Commission on juvenile cases in your state, to find out the facts on waiver of counsel, on youth charged in adult court either directly or after transfer from juvenile proceedings, on plea and caseload rates, the qualifications of youth counsel, the collateral consequences for youth of delinquency adjudications and adult criminal convictions, and fees. I mention fees because they're important. Juveniles and their families—often poor families—often have to pay for detention, restitution, and victim funds. The National Juvenile Defender Center told our office about a 19-year-old college student who was brought into court in handcuffs because she had not paid fees that had been assessed against her when she was a child. She was held until she agreed to a payment plan.

You can follow the lead of such states as Florida, Massachusetts, New York, and Washington, which have eliminated the indiscriminate shackling of youth in delinquency proceedings.

Your leadership can change the prospects for kids, especially disadvantaged kids. Now is the time.

A second area in which you are in a unique position to make an immediate and significant difference involves the removal of artificial and often enormously counterproductive obstacles to *pro bono* representation for limited purposes (so-called unbundled representation), *pro bono* lawyering by attorneys licensed in jurisdictions other than your own, and more meaningful self-representation.

No substantial improvement in the delivery of needed civil legal services is likely unless we can find a way to stimulate more—and better designed and supervised—*pro bono* activity. It is difficult enough to find capable, well-trained lawyers who are *willing* to dedicate the time to significant *pro bono* work, so we simply cannot afford to cling to antiquated rules that, in a misguided application of ethical norms, artificially inhibit willing attorneys' ability to actually perform *pro bono* services ably and with integrity.

In particular, there are several rules that each state chief justice should be able to support:

Number One: I believe that all states should permit discrete task representation. Roughly 40 states have adopted the ABA's Model Rule 1.2(c), or something similar, which permits *pro bono* attorneys to enter into representation agreements of expressly limited scope. These rules allow such attorneys to perform what are often short and simple tasks without taking on the duties and limitations that attend more classic full-scale attorney-client relationships. And because rules like 1.2(c) permit discrete task representation only where reasonable under the circumstances and after informed consent by the client, there is little or no downside.

Number Two: I believe you should all push for adoption of a rule—if one does not already exist in your state—sensibly relaxing conflict rules for *pro bono* attorneys. Historically, too many well-intentioned and ethically alert attorneys were prevented from rendering needed services—even when those services

I believe you should all push for adoption of a rule—if one does not already exist in your state—sensibly relaxing conflict rules for pro bono attorneys.

were as simple as filling out a request for mediation regarding a client's pending foreclosure—just because their firms had represented some financial or other institution on a vaguely related matter that had an attenuated theoretical interest in the issue at hand. Courts should not require *pro bono* attorneys who are providing short-term services with no expectation of continuing representation to screen systematically for such conflicts. Indeed, some states have gone even further—Washington, for example, permits *pro bono* attorneys to engage in short-term *pro bono* representation, subject to certain reasonable safeguards, even when they **know** of a lurking conflict.

Beyond that, I would urge all of you who have not already done so to follow the example of Washington, D.C. and relax rules restricting *pro bono* representation by lawyers licensed elsewhere and not barred in your specific jurisdictions. D.C. Court of Appeal Rule 49 permits government lawyers to provide *pro bono* services regardless of where they're licensed. That's a common-sense rule that substantially increases the availability of high-quality *pro bono* help to those badly in need. In fact, Rule 49 permitted me to provide free legal help at a Saturday clinic shortly after I started work at the Justice Department.

Number Three: I urge all of you to examine your states' rules of practice as they impact *pro se* litigants. I appreciate the difficulties that folks who can't afford lawyers pose to your states' dockets and courtrooms, but as we embrace technology and form simplification we'll be in dire need of clear rules that govern how court staff and non-lawyers may guide prospective litigants through the process of filling out self-help forms. I realize that unauthorized practice of law rules aren't a popular topic of conversation around courthouse water coolers, but we must not inhibit the ability of *pro se* litigants to seek ministerial

help in addressing issues as critical as child custody and housing simply because our UPL rules have not caught up with our reality.

In addition to the juvenile-justice and *pro bono* reforms that I've discussed with you today, a third initiative that I would urge each of you to embrace is the creation—and, for those 24 states (and the District of Columbia) that have already created it, the care and feeding—of an Access to Justice Commission, whether by that or some other name, that embodies a sustainable institutional commitment to grading the state's legal system in terms of how well or poorly it is delivering justice to the state's people. Such commissions, typically created by supreme court rule or order, are deliberately designed to include judges, bar members, civil legal aid providers, representatives of law schools and, in some instances, members of the state's executive and legislative branches.

And they have achieved some remarkable results.

In California, the Access to Justice Commission secured an annual \$10 million appropriation from the state legislature for civil legal services, and deserves much of the credit for the state legislature's enactment of the groundbreaking Sargent Shriver Civil Counsel Act, which establishes civil *Gideon* pilot projects that will begin next year.

In Washington State, the access-to-justice commission helped establish the Office of Civil Legal Aid in 2006 as an independent agency within the judicial branch, and in addition to increasing civil legal aid from \$6.6 million in 2005 to over \$11 million just two years later, it played a key role in implementing rule changes to facilitate unbundled legal services and increase cy pres funding for legal aid.

The Texas Access to Justice Commission has approached funding issues creatively and, in addition to securing \$2.5 million from the Attorney General's budget for legal services for victims of crime in 2001, has helped funnel to legal aid offices fees collected from Texas bar members and from out-of-state lawyers appearing *pro hac vice*.

The establishment of statewide Access to Justice Commissions has been called one of the most important justice-related developments in the past decade, and my office fully agrees. And it is your leadership that makes these commissions so successful.

The unifying theme of the three categories of action I am urging upon all of you is not to be found in any ethereal abstraction. It is, quite simply, that these steps would manifestly improve access to justice in your states; they are demonstrably achievable; and they undoubtedly demand the leadership that you as state chief justices are uniquely situated, qualified, and authorized to provide. Your responsibility to do what you can in these three realms entails more than a rhetorically lofty commitment to the ideals of accessible justice: It entails a willingness to exert genuine leadership on some tangible, nitty-gritty reforms that can have a significant, even if not a transformative, impact.

There may well be times when, as you contemplate the enormity of this challenge, the task ahead will seem so daunting that paralysis is the first reaction. Believe me—I’ve felt that, too. But, if the search for a universal solvent for the intractable problems of justice can be *paralyzing*, the commitment to these achievable reforms can be *empowering*.

So please don’t take the view that the three categories of changes I’ve outlined today are so incremental, the success I’m aiming toward so far removed in time, that there’s no point in rushing to get started. To the contrary, I’d suggest, the longer it takes to get there, the more crucial it is to begin without delay. As New Orleans Mayor Mitch Landrieu said in his first State of City address earlier this month, “There’s an old saying that the best time to plant an

As New Orleans Mayor Mitch Landrieu said in his first State of City address earlier this month, “There’s an old saying that the best time to plant an oak tree was 30 years ago. The second best time is now.”

oak tree was 30 years ago. The second best time is now.” Just know that, as you take up this challenge, my initiative, the Justice Department, the Attorney General, and the President will be cheering you on and doing all we can to be supportive of your efforts, learning from and disseminating your successes through whatever clearinghouse or network makes the most sense for that purpose and, yes, learning from and taking caution from your mistakes because, sad to say, we all do make some big ones.

I end with this thought: The trajectory of the moral universe will indeed bend toward justice, as Martin Luther King famously dreamed, only if we act to make the dream real. Unable to realize that goal in a single leap, we must not despair of realizing it step by step. The benefits of each step may seem small—but, as Richard Feynman once described the trajectory of the photon, each little arrow bent to a particular degree becomes in the aggregate a ray at the speed of light, lighting everything in its path. That ray can light our nation and the world if we all do our part. And, as I asked at the outset, “*If not you, who?*”

Information on how states are implementing, or may implement, Mr. Tribe’s recommendations regarding access to justice may be found online at [www.ncsc.org/~media/Files/PDF/Jury/Tribe-Idea-Resources-Final%20\(2\).ashx](http://www.ncsc.org/~media/Files/PDF/Jury/Tribe-Idea-Resources-Final%20(2).ashx)

IMPROVING COURT ACCESS: TECHNOLOGY

“We cannot afford to stop investing in the future because we simply cannot afford to do things the way we used to do them.”

Chief Justice Eric J. Magnuson of Minnesota, State of the Judiciary 2010

FUTURE TRENDS IN PUBLIC ACCESS: COURT INFORMATION, PRIVACY, AND TECHNOLOGY*

Hon. Paul H. Anderson

Justice Supreme Court of Minnesota

More and more, the public is demanding instant access to all sorts of information electronically. What are the responsibilities of courts in safeguarding sensitive, case-related data and in regulating the use of social media during court proceedings?

*“Things Are in the Saddle and
Ride Mankind.”*

*“Ode to William H. Channing,” Poems,
by Ralph Waldo Emerson (1847)*

Any inquiry into future trends with respect to privacy, access to court information, and changing technology should bring to mind Ralph Waldo Emerson’s lament from more than 150 years ago. Emerson grew up with the promise of the better life the Industrial Revolution would bring. He initially thought technology would free mankind from poverty, servile labor, and the vagaries of pre-industrial life. But he became disillusioned when mankind lost control over its own destiny as industrialization presented a whole new raft of challenges and problems. Some things do not change. Our society is in the midst of the information/digital revolution, which also promises a better life. But this revolution has brought its own set of vexing challenges and problems, many of which affect the courts.

This article will attempt to identify some of these future challenges and problems with the hope that by identifying them, they will become less vexing. The discussion will start with a short review of the demise of the practical obscurity of court-collected information. It will then address some of the forces that are driving recent changes and how courts are reacting to this new reality. There will be a discussion of these reactions in the context of what

courts have done and what the future may bring. Many of the observations are based on the author’s experience as a supreme court justice and as a participant in and organizer of several symposia dealing with this issue.

Integrity of Court Data

Advocates for more restrictions often cite incidents where the use of court-collected information has led to fraudulent acts, identity theft, employment and credit problems, and the destruction of reputations. Such advocates assert that while much of the information courts collect may, in a certain technical sense, be factual, even honest, it frequently lacks integrity once it is disseminated. For example, one spouse in a divorce proceeding may make rather salacious allegations against the other spouse. It is factually correct to state that the first spouse filed an affidavit making certain allegations. But the key question quickly becomes one of whether the information disseminated by the courts has integrity (Carter, 1996). Is what has been asserted true? It may not be; but to have the unfounded allegations searchable and accessible on the Internet can do irreparable damage to the reputation of the accused spouse. Legitimate questions then arise as to the courts’ obligation to ensure that the information they disseminate has integrity.

Practical Obscurity—The Not So Distant Past

Historically, the American judicial system has provided open access to court records on paper to any member of the public willing to travel to the courthouse. The policy behind open access is that if the people are to have trust and confidence in the judiciary, the legal and factual basis underlying any court decision must be subject to public scrutiny.¹

Before the transition to electronic recordkeeping, it was often difficult, if not impractical, to access the information behind a court’s decision or build significant dossiers on individuals from publicly accessible paper records. There were too many potential sources, and the volume of paper information was often unwieldy. Further, the information was frequently located at different places. Sometimes, the custodian of the information would put another subjective limit on access, i.e., the person behind the counter would be less than cooperative in providing the requested information. Moreover, once the information was located, it had to be copied. Under these circumstances, it was often only the most diligent seeker of information who would discover

what the court had in its possession. These limits on access became known as “practical obscurity.”

Some people in the court system viewed practical obscurity as a virtue because it protected personal privacy in statewide compilations of information. Some commentators, in particular the news media and data compilers, saw practical obscurity as a problem to overcome, not a virtue. Others, like public defenders and community activists,² saw it as an illusion that never really existed or something that in recent years had become significantly eroded.

Given the existence of practical obscurity and limited access to court information, little consideration was given to what information was put into a court file and what information was made accessible to the public (e.g., Social Security numbers, birth dates, bank account numbers, etc.). There was little concern that this information would be searched and used for any purpose other than proper court activity.

Personal computers, the Internet, and all the collateral consequences that followed from these innovations—such as laptops, notepads, cell phones, smart phones, Facebook, YouTube, Google, Wikipedia, and Twitter—have radically changed the information world we live in today. So have changes in our concept of privacy and our expectations with respect to information (see Johnson, 2010; Stone, 2010; “Social Network Users,” 2011). The public not only expects easy access to information, but also expects it to be instantaneous, wherever one is located. This new paradigm has offered considerable efficiencies and cost-saving innovations for the courts, but it has also presented several new challenges.

Recent Trends—The Last Decade

To properly understand future trends, it is necessary to review what happened during the last decade. Many are familiar with the arcade game “Whac-a-Mole,” where the player uses a mallet to hit a mole-like figure as it pops up; but just as one mole is whacked back into its hole, two or three other moles appear. The last decade has been like this for courts dealing with information. As

courts spot and address a problem, two or three other problems pop up. There is little prospect that this scenario will change.

The continuing maturation of the digital age has created an environment where most court systems maintain all or part of their information electronically. When these electronic records are properly compiled and maintained with well-defined data fields, searching for and retrieving data is often as simple as pushing the appropriate button on a computer. Moreover, this database can be remotely available in a searchable format to anyone. Given this new electronic access, most activity by courts during the last decade has centered on how they should (1) align their traditional policy—open access tempered by practical obscurity—with the new capability of providing remote access to searchable records and (2) enact rules and regulations to deal with this new reality.

Initially, two approaches emerged: the “complete-access” approach, which provides remote Internet access to all court information that had traditionally been available at the courthouse on paper, or the “go-slow” approach, which only provides limited remote internet access. Proponents of the complete-access approach assert that if the courts are truly committed to open access, any failure to put all court information on the Internet is hypocritical because it restricts the public’s legitimate right to have access to public information. Further, they argue that, in the future, all court records will be available electronically at the courthouse, so why not start doing it right in the first place? But it is important to note the complete-access approach has led to frequent complaints from citizens about the improper use of information made available on the Internet. These complaints sometimes led to changes in court policy.³

Proponents of the go-slow approach argue that until electronic access systems become more sophisticated, much harm can be caused to innocent citizens. They assert that courts must see that this harm is minimized.

Proponents of the go-slow approach argue that until electronic access systems become more sophisticated, much harm can be caused to innocent citizens. They assert that courts must see that this harm is minimized. Minnesota has adopted a “go-slow,” limited-access approach where only a limited amount of court information is available on the Internet, but all other traditionally available court records are accessible at the courthouse in both paper and electronic formats. New requests for access are dealt with as they arise. While there has been relatively little dispute about implementation of the go-slow rules, courts like Minnesota that follow this approach continue to be criticized, particularly by the news media, for improperly denying access to public information (see Recommendations of the Minnesota Supreme Court Advisory Committee, 2004; hereafter, Minnesota Recommendations, 2004).

As more problems with access arise, practices and procedures implemented under the two alternative approaches have evolved, and an interesting trend has developed. The divide between the two approaches has narrowed. Some of the problems addressed that have led to this narrowing include personal identifiers, unproven criminal allegations, criminal records, race data and disparate impacts on communities of color, family-law records, and inquiries by data harvesters. For example, the debate involving what part, if any, of personal identifiers should be used and whether birth dates should be accessible has led to a general consensus for limits on access to personal identifiers. Here, the discussion about birth dates has been particularly sensitive in the criminal area, because members of the news media claim that birth dates are essential for them to identify the right person accused of a crime. This issue can be particularly important in a state like Minnesota where many citizens have similar or identical surnames, like Anderson, Carlson, or Johnson.

Race is another example of an area where there has been much discussion, particularly with respect to criminal records. In Minnesota there is credible information that persons of color are more likely to be stopped by the police and charged with an offense. But after being charged, there is a higher dismissal rate for persons of color than for other segments of society (Minnesota Recommendations, 2004: 20, notes 22 and 26). This is sometimes

referred to as the “we will sort it out at the courthouse” approach. Concerns have been raised about disparate impacts on persons of color when criminal information regarding such arrests is made available on the Internet and the potential harm to those persons when they seek employment or attempt to rent an apartment.

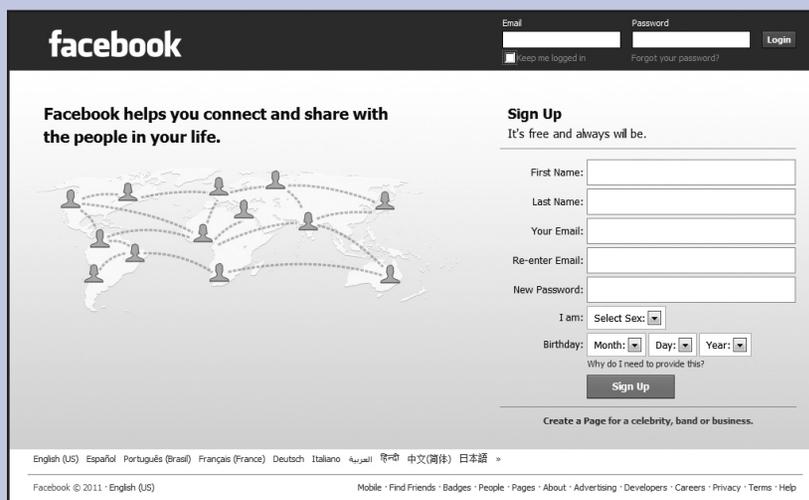
The compilation and use of bulk records received considerable attention during the last decade. Bulk records refer to compiled records such as a database containing some or all of the elements of an online computer system. Courts have historically maintained such databases for analytical purposes. Data-warehouse technology has made this data more accessible. This increased accessibility has also forced courts to address the issue of what data will be compiled in bulk form and what bulk data, if any, should be made available to data harvesters or on the Internet. Courts have also dealt with whether they can or should profit from the sale of bulk data. These will continue to be evolving issues facing the courts.

Other issues include information on jurors and witnesses, access to a court reporter’s electronic records, responsibility for correcting inaccuracies in court records, vital statistics records, expungement of criminal records, and remedies and liability for rules violations. A parallel concern is what legislation should be enacted to help meet these new challenges. There is a general consensus that state legislatures, like the courts, are behind the curve when it comes to regulating the use and abuse of information on the Internet. Coordination of efforts between courts and other branches of government to regulate data will undoubtedly continue into the current decade.

Future Trends—What Next

As courts look to the future, there are many uncertainties, but at least one thing is for certain—courts will continue to play “Whac-a-Mole” with information and privacy issues. The pace at which new issues will pop up will not abate; rather, it is likely to accelerate.⁴ Courts are not likely to get ahead of the curve any time soon. The more realistic objective will be to keep up with the curve or at least not fall too far behind it.

Current issues will continue to evolve even as new issues arise. Of these issues, the use and misuse of social media is definitely the largest elephant in the room when it comes to future trends in managing court information. Social media is everywhere and has become a fact of life for civil society worldwide, involving many actors—regular citizens, activists, NGOs, telecommunications firms, software providers, and governments (Shirky, 2011). It is not only in the local courthouse but has played a major role in organizing and promoting social unrest and governmental upheaval in places like Iran, Tunisia, and Egypt (see “Twitter 1, CNN 0,” 2009; McManus, 2011; Cafferty, 2011).



Today social media is omnipresent in our society, yet less than a decade ago it was hardly visible. Facebook, YouTube, and Twitter are all recent innovations. Less than four years ago, Twitter handled fewer than 5,000 tweets a day; it now processes well over 50,000,000 tweets per day and its use is increasing (Beaumont, 2010). Facebook was not launched until the year 2004 and now has more than 600,000,000 active users worldwide.

Reactions by courts worldwide to the sudden challenges posed by social media have been mixed. The Scottish High Court in Glasgow indicated that it would allow tweets by journalists from the courtroom in a high-profile criminal case if the journalists provided a contemporaneous, fair, and accurate account of what

was going on (Campsie, 2011). But in a high-profile murder case in Canada, the defendant’s attorneys argued that rules must be established for tweeting in the courtroom because its use resulted in “crude, unnecessary, misplaced” and “lurid” comments being broadcast about the criminal proceedings (MacLoed, 2011). In Minnesota we have had judges report that witnesses have attempted to either e-mail or tweet plaintiffs and defendants while still on the witness stand. Reuters reports that a high-school librarian may face criminal charges for conducting online research while she was a juror in a capital murder case (Grow, 2011).

Several court cases have resulted in mistrials or reversals because of the misuse of social media. In West Virginia a conviction for felony sexual abuse was reversed after the court learned that two jury members had looked up the profile of one of the alleged victims on Myspace, and then shared this information with other jurors (*State v. Cecil, 2007*). In Maryland, a first-degree murder conviction was overturned when the court learned that jurors had consulted Wikipedia for certain definitions.⁵ There are several other cases where courts have had to deal with similar issues.⁶ This use of social media and the Internet is a threat to the jury trial system, which depends upon juries receiving information in a disciplined setting where the court can oversee the proceedings so that only information relevant to the case is presented to the jury. New rules, regulations, protocols, and jury instructions will need to be developed to address the use of social media and the Internet in the courthouse.

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The use of social media by attorneys will require regulations to preserve ethical standards and the integrity of court proceedings. Montana's bar association recently issued standards for the proper use of social networking by attorneys.⁷ While the Montana standards are quite general, they send the message that common sense applies when attorneys use a social network. The bottom line on social media is that courts facing its pervasive use must provide guidelines for its use and penalties for its misuse not only for attorneys, but also for judges and court staff (Mauro, 2010; Social Networking Law Blog, 2009).

E-filing, e-charging, and uniform citations are also harbingers of more change. E-filing puts court information into an electronic format when an action is commenced. E-charging does the same for criminal-charging information. Minnesota's approval of a uniform criminal citation form will result in all law-enforcement agencies using the same citation form.⁸ This uniform citation form will allow violations to be processed quickly and lead to a more efficient way to pay fines. But it will also create a uniform electronic format where more criminal information will be retrievable at the push of a button.

Increasingly tight budgets will force courts to use technology more often and more efficiently to preserve scarce resources. Interactive television will see more use as a cost-saving innovation, but courts will need to establish rules for dealing with the information recorded during these proceedings. The expanded use of electronic court reporting will also raise additional information-access issues. Court proceedings are being recorded electronically, but many of the electronic recording devices used are so sensitive that nearly all conversations in the courtroom, even discussions between attorneys and clients, are sometimes inadvertently recorded. Minnesota recently faced inquiries from the news media as to what constitutes the official court record when such recordings exist. Some have asserted that everything that has been recorded is part of the record and should be accessible.⁹

Another emerging issue is who has the primary responsibility for serving as the gatekeeper for sensitive or confidential information. In Minnesota, the obligation to redact this information is placed on the attorneys, but there

Another emerging issue is who has the primary responsibility for serving as the gatekeeper for sensitive or confidential information. In Minnesota, the obligation to redact this information is placed on the attorneys, but there are still continuing problems with compliance.

are still continuing problems with compliance.¹⁰ One interesting nuance is compliance by pro se litigants. The expectation was that it would be difficult to get pro se litigants to comply with the rules. But, much to court administration's surprise, pro se litigants have paid close attention to redaction instructions.¹¹

There is a growing tendency by some courts to exercise much more control over what will be accepted for filing. Courts have traditionally been the repository for almost all litigation-related information. But with the realization that with electronic information comes more responsibility and some unintended consequences, many courts have decided they will no longer accept certain types of information.¹² This is especially true with respect to discovery information. There undoubtedly will be continuing developments in this area, especially as another new reality is dealt with—who has the responsibility for preserving, and how do we preserve, electronic information?

The future will most likely see increasing efforts to integrate interagency information systems. Some of the forces driving this integration will be the policies that promote a paperless society (i.e., e-filing and e-charging), better technology, pressure for smaller and more efficient government, and tight budgets. Historically, most government agencies had their own proprietary information system. Communication between these systems was like talking to someone who spoke a foreign language. During the last decade there have been significant efforts to break down these communication barriers. Interagency cooperation between law enforcement and the courts is on the front line of these efforts.

But interagency integration of information has raised its own set of particular problems. Many of these problems are technological, but one major policy issue is identifying which entity will be responsible for the information. Who is to be the custodian of the information, and more important, who will be held accountable when something goes wrong? In Minnesota, one law-enforcement agency viewed itself as a mere conduit for much of its information and the courts or other law-enforcement agencies as the accountable custodians. Courts should continue efforts to establish greater interagency integration of information, but this cooperation should go hand-in-hand with the development of rules and protocols as to who is the appropriate responsible party, i.e., the courts, law enforcement, or probation services. In the future, courts may, on certain occasions, conclude that it is more prudent to reject front-line responsibility for information that has traditionally been in their custody.

As part of the movement into the digital age, more and more court systems have initiated imaging projects where they convert their paper files into an electronic format. These projects have also led to some information management problems. One problem is the allocation of already scarce resources to redacting sensitive and confidential information from documents that were filed when little or no attention was paid to protecting this type of information.

Courts will continue to wrestle with how they handle bulk data—key issues are what will be made generally available, what will not be made available, and

Metadata, sometimes referred to as metatags, will likely present a problem for courts. All courts that release information need to be aware that electronic documents may include embedded metadata that reveal information beyond that which is intended to be released.

what, if any, bulk information will be made available for a fee. Tight budgets may drive courts to charge a fee for providing bulk data, which brings up another question: What is an appropriate fee?¹³

Uncertainty is sure to plague the regulation of genetic information in the court's possession. Genetic information is frequently used in paternity suits and criminal cases. This information can be valuable to third parties. Law enforcement may want to use the information in investigations, and the information may be valuable to health-insurance companies and employers. Even with the clarification added by the Genetic Information Nondiscrimination Act, the rights of third parties to the genetic information of others is still unclear, and courts will need to be careful how they keep and disseminate such information (Atkins, 2010).

Metadata, sometimes referred to as metatags, will likely present a problem for courts. All courts that release information need to be aware that electronic documents may include embedded metadata that reveal information beyond that which is intended to be released. This metadata can be in documents that are either submitted to the court or internally generated. It can include such information as who drafted the document; when and by whom the document was modified; what deletions were made; and why specific changes were made to the document. Release of this metadata can have many unintended consequences, e.g., disclosing how the holding in a court decision evolved. A federal district court has recently held that metadata fields are an integral part of public records. It is inevitable that courts must develop practices and protocols for controlling or managing the use and dissemination of metadata.¹⁴

The courts will face several other problems and dilemmas when dealing with information. Evolving attitudes toward privacy, information integrity, and the emerging role of alternative media are other issues that will continue to confront the courts and society. In any case, the reader should by now have a firm grasp on the significance and enormity of this issue. Courts are definitely in the midst of the information/digital revolution, but they have only a limited concept as to what future challenges they will face. Thus, the future is filled

Alternative Media in Minnesota

Alternative media are newspapers, radio, television, magazines, movies, blogs, etc., which differ from mainstream media in their target audience, content, and means of distribution. They frequently represent a particular point of view, challenge the existing power structure, and seek access to court information.

The Uptake is a Minnesota-based citizen-journalist organization, which provides news coverage on the Internet. It relies heavily on volunteers and new technology, such as cell-phone cameras and off-the-shelf equipment. During the 2008 Minnesota Senate election recount, The Uptake provided live Internet streaming of canvassing-board and court proceedings, which allowed lawyers in remote locations to communicate by Twitter and e-mail with their in-court colleagues and advise them on trial strategy. The Uptake's coverage of recount proceedings also allowed members of the public to view disputed ballots and arrive at their own conclusion as to what constituted a valid ballot (see Weiner, 2010). Election officials as far away as the Philippines monitored these proceedings as part of their preparations for the first-time use of optical-scan-voting machines in that country's May 2010 general elections.

with uncertainty, but, as Law Professor John W. Reed has said, with uncertainty comes optimism: “uncertainty about the future necessarily means that the future is not foreordained and that it remains to be affected by what you and I do—that we have a role to play in determining the shape of that future” (Reed, 2009: 7).

As court systems look to the future, they should be optimistic about their ability to shape that future. To return to Emerson, even if “things are in the saddle and [appear] to ride mankind,” court systems can and should be right there in the saddle with them. Undoubtedly, it will be an eventful and exciting ride. Judges, court administrators, technology experts, and attorneys will all play a role in determining the shape of this future. But if those who work in and with the court system remained engaged, have sufficient resources, and do their jobs well, most if not all of the pending challenges can be overcome.

ENDNOTES

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¹ See *U.S. Dept. of Justice v. Reporters Committee for the Freedom of the Press* (1989), at 749 (holding that a citizen's interest in maintaining secrecy of his arrest and conviction records justified maintaining the records' “practical obscurity”).

² Witnesses testifying before the Minnesota Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch on February 12, 2004, including Tom Johnson, Council on Crime and Justice; Pastor Albert Gallmon, Jr., Fellowship Missionary Baptist Church, Minneapolis; Archbishop Harry J. Flynn, Archdiocese of St. Paul and Minneapolis; Roger Banks, State Council on Black Minnesotans; Kizzy Johnson, Communities United Against Police Brutality; and Bishop Craig Johnson, Evangelical Lutheran Church in America.

³ For example, the clerk of court in Butler County, Ohio, was ordered to turn off Internet access to court records until domestic-relations cases could be removed due to concerns over disclosure of Social Security numbers, bank-account numbers, and other personal information (Morse, 2003). The clerk of court in Loudon County, Virginia, unplugged his subscription-based remote-access service after concerns over disclosure of personal information caused the county board to formally request the action and the creation of a task force to study the issue (“Clemens Unplugs Online Remote Access System,” 2003). Even the federal judicial conference had to back away from its initial Internet access for criminal records (Associated Press, 2001; citing access by inmates who harassed or beat other inmates, and access to presentence investigation reports, which contain sensitive material).

⁴ As evidence of how quickly the law is developing, during the editing of this article the Florida Bar Association proposed a new Rule 2.451 that gives judges the authority to ban and confiscate devices such as digital and video cameras, audio recorders, and cell phones but provides an “exception” for “professional journalists” as defined in Florida's journalist's shield law. Proposed rules dealing with the use of electronic devices in court are posted at www.floridabar.org/divcom/jn/jnnews01.nsf/8c9f13012b96736985256aa900624829/22ebc5031a9221dd85257801004aa25e!OpenDocument. In contrast, a rules committee of the Massachusetts Supreme Judicial Court proposed amendments to SJC Rule 1:19 that are designed, in part, to address the more-varied use of electronic technology in courtrooms, both by traditional media and new media. NOTICE, Proposed Amendment to Rule 1:19 of the Rules of the Supreme Judicial Court (posted at www.mass.gov/courts/sjc/comment-sjc-r119-012811.html).

⁵ *Wardlaw v. State*, 2009 (holding that when a juror researched a psychological disorder from which the defendant allegedly suffered, the district court's reminder to the jury not to conduct

research was an insufficient response, and a mistrial should have been granted).

⁶ See, e.g., *People v. McNeely*, 2007 (holding that where the foreman of the jury had discussed deliberations on his blog, the defendant was deprived of a fair trial); *State v. Scott*, 2009 (holding that when a juror announced that she had done Internet research on the case and told the jury what her verdict would be, the district court erred when it denied a mistrial); *United States v. Ebron*, 2010, at *6-8 (holding that a juror was properly excluded for conducting Internet research during a trial); *In re Methyl Tertiary Butyl Ether Products Liability Litigation*, 2010, at *7 (holding that it was juror misconduct to conduct independent legal research during a trial).

⁷ The rules are based upon commonsense principles and include directions to be responsible, upfront, civil, and respectful; to be quick to correct any errors; to keep the information relevant so it adds value; to follow copyright and fair-use laws; to protect proprietary and client information; to refrain from endorsements of political candidates; to comply with the Montana rules governing lawyer advertising; to avoid any violation of anti-trust laws; and to abide by the social network's rules (see "New Social Networking," 2011).

⁸ See Order Promulgating Amendments to the Rules of Criminal Procedure Relating to Use of a Statewide Uniform Citation, ADM10-8049 (Jan. 13, 2011). By January 1, 2012, Minnesota will have one citation form used throughout the state. It will replace 128 different citation forms used by over 450 different law-enforcement agencies.

⁹ See Minn. R. Pub. Access to Record of the Judicial Branch 4, subd. 3.

¹⁰ Minn. R. Gen. Prac. 11.

¹¹ Discussion with Michael Johnson, senior legal counsel, Minnesota State Court Administrator's Office, Legal Counsel Division, January 20, 2011.

¹² Although court rules expressly direct parties in criminal cases, for example, to file only a list of discoverable items and not the items themselves, Minn. R. Crim. P. 9.03, subd. 9, many courts routinely accepted all sorts of discovery items, including photographs in electronic format, surveillance videos, and bulky items. Courts have had to rethink this approach as they have discovered that they also inherited responsibility for public access to these items, which can be difficult to reproduce and preserve (for chain-of-custody purposes), and to filter any appropriate privacy interests. Discussion with Michael Johnson, January 20, 2011.

¹³ Minnesota's Rules of Public Access (8, subd. 6) permit the imposition of a reasonable fee, on top of any copy production costs, for any bulk data that has commercial value. In practice this commercial fee is waived for bulk-data disclosures for education or for media analysis as long as the recipient agrees to limit the use of bulk data. Discussion with Michael Johnson, January 1, 2011.

¹⁴ *National Day Laborer Organizing Network v. United States Immigration and Customs Enforcement Agency*, 2011 (holding that the federal government must include metadata in Freedom of Information Act productions and that certain key metadata fields are an integral part of public records).

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EMERGING TECHNOLOGY TRENDS THAT WILL TRANSFORM COURTS

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Technology can be transformational. For courts this means involving the entire court organization, wedding technology to serious efforts at process reengineering, migrating from document to content management, and having the power to manage customer relations.

Change and Process Reengineering

Technological change is happening at a breakneck pace. It encompasses not just hardware and software, but the way we interact with each other as individuals, customers, employers, and family members. The pressure on courts to adopt technological advances, especially as a means to counterbalance budgetary shortfalls, is enormous. Focusing primarily on technology as the solution to court problems has not proven to be a successful strategy. The reasons for this are that courts are steeped in a culture of precedent and caselaw where implementing change can be an arduous process, and courts too often look to technology for quick, superficial fixes.

However, technology serves as a very effective enabler of meaningful change if it is coupled with a serious internal examination of court service delivery and a thoughtful effort to reengineer court processes. This effort should include a wide spectrum of internal court participants, such as judges, management, courtroom clerks, clerical staff, probation (to the extent that it is an internal function of the court), and court IT staff. If IT support is not part of the core court family and provided outside of the organization (e.g., by the city, county, or state), it is still vital to have their firsthand exposure to the results of any process-reengineering efforts.

The pressure on courts to adopt technological advances, especially as a means to counterbalance budgetary shortfalls, is enormous.

Here are a few areas to focus the group's attention:

- Identify the biggest problems facing the participants.
- Ask for suggested solutions to those problems.
- Challenge the individuals to consider that a vast majority of courts in the United States try only a very small percentage of the incoming caseload. (Note that it is difficult to get a precise figure on jury trials due to differing state definitions of what constitutes a “trial.”) Within this context, what programs, policies, and procedures are needed to stimulate the highest means of case resolution (case settlement)?
- Ask whether current processes are necessary at all, and if so whether they could be performed on the Internet or in an alternative (less labor-intensive) way.
- Ask about the subject matter of the most frequent calls and front-counter interactions. Consider how to address these inquiries by some other means.
- Ask whether “back-end” office tasks are duplicated in multiple locations and whether it may be more advantageous to consolidate these functions in one location.
- Check as to the frequency of personnel shortages in critical positions, such as judicial officers, interpreters, and court reporters. Consider whether these as-needed “deployments” could be accomplished by audio or video teleconferencing. Include in this category case backlogs that could be addressed by assigning a “virtual” judge.

These are but a few of the in-depth areas of judicial administration that should be seriously considered by internal court operatives. The technology solutions to these problems are likely to be surprisingly straightforward, but successful implementation will require significant procedural and operational changes that the court organization must embrace as necessary and accept as an improvement over the status quo. After this internal examination, external stakeholder groups, such as prosecutors, public defenders, the bar, law enforcement, corrections, and others, should be brought in to further expand on reengineering options.

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So is that it? Is this the magic formula the courts can follow to turn around their economic woes and continue to deliver high-quality court services? Not entirely. There are a few missing ingredients that will take these efforts to a much higher level if the court is willing to accept the challenge.

Content Versus Document Management

To take the next steps, a robust, automated case management system is needed that is capable of providing the right management information and data files. It also includes court management and IT staff willing to take the next steps toward taming age-old problems in records and customer management in a much more comprehensive way.

First, there is a critical need to migrate away from document management into content management. Court clerical staff tends to fixate on the documents that are filed with the court, with a premium placed on maintaining the *immutability* of those documents in an effort to protect the integrity of case files. As such, too many E-filing projects squander the opportunity to capture what is contained in the document and focus primarily on filing a document that is reproducible in as close to the original format as possible.

The chief reason this is not a good strategy should be clear. Courts perform intelligence work, which requires that the right information be available to decision makers when needed. This applies to judges, mediators, courtroom clerks, caseflow managers, family-law facilitators, probation, and just about everyone in the custody chain of that file.

There is another good reason why content management is sorely needed in today's courts. With the exception of evidence presentation technology and legal research, most IT advancements are directed to the clerical side of the court organization to help "manage" files, produce calendars, generate notices, and provide customer service.

Those leaders that have embraced the concept of the "paperless court" have directed their attention primarily to document management solutions, including imaging, scanning, and e-filing of *immutable* PDF files. Even the most robust document management system renders the judge to the unenviable role of scrolling through electronic files seeking the information that is needed to make an informed ruling. Too many of these document management "solutions" merely photograph files and lump them into poorly organized folders or directories.

The result is a judge (often on the bench) hunched over one or more computer screens searching for pertinent portions of the record. For those court leaders who have embraced the *CourTools* performance measures and surveyed courtroom participants for perceptions of fairness, it is no surprise that we are receiving lower and lower scores on the question of *whether the judge listened to my side of the story before he or she made a decision about my case*. All too frequently, we find ourselves in the same position when we visit our doctor or health-care professional. Instead of listening to the patient, it is not unusual for the medical representative to direct his or her attention to a computer screen; think about how often this has happened to you and how you felt afterward about the quality of your health care.

... if the focus were to shift from documents to content management, judges will quickly see how the technology could be harnessed to improve the quality and timeliness of judicial decisions, as well as to solve everyday, real-life problems.

So let us take a typical family-law calendar where a judge has multiple cases on the morning docket, and the first case comes up. What does the judge need to know about that case to make a quality ruling? I suggest the following baseline data is needed:

- Whether or not the case in chief has been adjudicated. This is a critical issue because the context in which a judge rules differs between pre- and post-disposition cases. In the former, the guiding principle in most states is *what is in the best interest of the child (or the parties in the absence of children)?* In the latter, it is *what has changed in the circumstances since this case was adjudicated, and does that change now warrant action by the court?*
- Is there a marriage, and if so what is the length of the marriage?
- Are there children? What are their ages, and are their special circumstances (child abuse, mental competency, medical issues, etc.)? Has custody been resolved?
- Is there debt, and if so has the resolution of that debt been decided?
- Is there real property, and if so has the resolution of that real property been decided?
- Is there a pension or military benefits, and if so has the resolution of that pension or military benefits been decided?
- Has this case gone through mediation, and if so what was the resolution?

All of this information resides somewhere in the case file. It can be discerned by perusing the paper or electronic file before or during the calendar call, or it could be extracted from the *content* of the case file using search and taxonomy tools and presented as a *dossier* of sorts summarizing the pertinent case issues. This would speed up resolution of the matter and allow the judge to pay attention to the parties and even to begin resolving some of the loose ends in the case that may not be at issue at that particular hearing.

Customized *macros* or data queries could be constructed to produce the typical information needed to rule on a civil, misdemeanor, felony, probate, or any other case, and even assigned to a shortcut keyboard command, such as an F (function) key, or other quick means to produce a summary report.

Often I hear court managers and IT staff complain the judges are slow to embrace document management solutions. I contend that if the focus were to shift from documents to content management, judges would quickly see how the technology could be harnessed to improve the quality and timeliness of judicial decisions, as well as to solve everyday, real-life problems.

Customer Relations Management

The remaining shift that is needed to truly apply technology to court operational needs is the adoption of customer relations management. To illustrate this point, let me relate a recent experience.

I was teaching a caseload course in Alexandria, Virginia, and I was staying at a hotel some distance from the training venue. During breakfast on the first day, I called the local cab company on my cell phone and ordered a taxi. Soon after I hung up, I received a text message confirming my order and indicating that Fred would be there in five minutes. I then received another text when Fred arrived. That night, I was driven back to my hotel by one of the participants.

The next morning, I called the same cab company. I was greeted by name and asked if I was going to the same destination as the previous day. I said yes, and soon thereafter received text messages confirming my order and the arrival of the taxi.

Let us examine what just happened. The cab company received a call for service from someone they considered to be a one-time customer. After my call on the second day, I became a frequent customer, so the company anticipated my order and acted accordingly. How does this apply to courts?

Courts deal with frequent and infrequent customers. Lawyers, attorney services, and even the media are frequent customers with predictable needs that are easily anticipated and, in many instances, fulfilled with little or no staff interaction. Infrequent customers such as litigants and witnesses have relatively predictable needs as well. They often need to know the location and date of hearings, whether matters are postponed, directions to the courthouse and to locations within the courthouse, and compliance information.

Customer relations management can be a powerful tool to enable courts to continue to deliver quality court services, improved access to justice, and cost efficiencies.

The art and science of customer relations management uses software and data to manage the customer “touch points” using the least labor intervention. It could be as simple as allowing individuals to “subscribe” to a particular case and thereby receive notice (in a form of the customer’s choosing) whenever there are filings, hearings, postponements, rulings, etc. If the customer is infrequent, this information could be accompanied by directions to the courthouse and courtroom, what is needed to prepare, and even what is needed to comply with resulting court orders. Anticipating and filling these needs *even before the customer asks* results in fewer phone calls, fewer trips to the front counter, fewer instances of failure to appear, and higher instances of compliance.

With reduced customer service hours and court staff, customer relations management can be a powerful tool to enable courts to continue to deliver quality court services, improved access to justice, and cost efficiencies.

The Bottom Line

Technology is a powerful enabler that can empower courts to meet core purposes and responsibilities, even while severe economic pressures reduce court staff, reduce hours of operation, and even close court locations. To harness technology for this purpose, serious efforts are needed to examine process-reengineering opportunities, and courts must plan to (a) migrate from document to content management and (b) initiate customer relations management to improve the quality of justice, access to justice, and public trust and confidence in courts as an institution.

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CATCHING THE WAVE: STATE SUPREME COURT ONLINE OUTREACH EFFORTS

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State supreme courts have begun to grasp the many ways technology can connect the public with courts. This article will review some of the main trends in state supreme courts' use of the Internet to educate the public about their work.

State supreme courts are courts of last resort for the overwhelming majority of disputes in this country ranging from family issues to property law to criminal cases. Yet surprisingly few Americans are aware of the function of state supreme courts or the relevance state supreme courts have in their lives. This article will examine the use of technology to help the public better understand the important work of state supreme courts.

Not surprisingly, there is a broad continuum in state supreme courts' use of technology to disseminate information to the public. Online information from state supreme courts comes in all shapes and sizes. Some states have sophisticated state supreme court Web sites offering plentiful information about the court, its justices, and its output. Other states, not so much. Many states' sites appear as placeholders, featuring barely more than a static listing of the court's address and justices. Often, information about a state's supreme court is scattered within the state judiciary's broader Web site or is grouped on an "appellate courts" Web page.

... the impulse to "put everything online" is tempered by many factors, ranging from a lack of technical sophistication to resource constraints to privacy concerns.

Why more state supreme courts have not taken advantage of the Internet to disseminate information about their work is a tricky question. As has been the case with trial courts, the impulse to "put everything online" is tempered by many factors, ranging from a lack of technical sophistication to resource constraints to privacy concerns. Even with these challenges, state supreme courts are increasingly tapping the power of the Internet to give the public better access to the workings of the court. Aside from the ease with which the Internet enables dissemination, courts at every level have long recognized its potential for cost savings and unprecedented public education.

This article describes two distinct waves in the use of technology to disseminate information about state supreme courts.¹ The "first wave" is the release of unfiltered, unedited documents and data to the public about the court. The "second wave" refers to efforts to distill court information to help the public better follow the happenings of the court.

The First Wave

First-wave efforts to place selected information online allow the public easy access to an unprecedented volume of information about state supreme courts. Access to this raw data holds great benefit for lawyers, judges, and other court professionals, but can prove difficult for untrained members of the public to digest.²

A basic example of first-wave outreach is releasing opinions online. While this would appear a straightforward service, there is surprising variety in how state supreme court opinions are made available (and not made available) on state judicial Web sites. Most state supreme courts publish opinions on their court Web sites, through the state judiciary's main Web site, or through a third-party host such as a law school. While most state supreme court opinions are available from a certain date forward, those dates vary considerably. Alaska's online opinion archive starts in 1960; California's in 1850. Georgia's site makes available opinions from the current and previous year only. The majority of states that offer archived opinions do so from 1980 and after.

State supreme court sites also vary widely in how readily accessible opinions are. Most state supreme courts publish opinions online free of charge. Others

charge for access. Alabama, for example, charges a \$200-per-year subscription fee for access to its opinions.³ Some state supreme courts allow broad, term-based searching. Others, such as Virginia, Maryland, and Nevada, require users to know case-specific information, such as a party name, to search the opinion database. Georgia provides another example of constricted searching, allowing its opinions to be searched only by date.

Another variable is the format in which state supreme courts release opinions online. Some release opinions in HTML, or “hypertext markup language.” This is the basic format most Web sites use; all Web browsers can view HTML. However, not all Web browsers will render HTML the same way. This can create pagination and citation problems in the case of court opinions. To remedy this, some courts have begun numbering paragraphs of opinions, allowing for “medium-neutral” citation. As of this writing, nine states make opinions available in HTML.

Other courts release documents in PDF format. True to the name, “portable document format” documents appear in the same format regardless of the computer used. Most browsers cannot view a PDF document without a separate extension. PDF documents often take longer to load and require more computer memory to display—a special problem for users who can only access the Internet from public libraries, which often have slow Internet connections and small amounts of memory and forbid users from installing additional programs or extensions. Some PDF documents are searchable, others are not. When a hard-copy document is scanned and converted into PDF, as is still the practice in many courts, the resulting PDF may not be searchable. The majority of states make opinions available in a searchable PDF format.

First-Wave Efforts

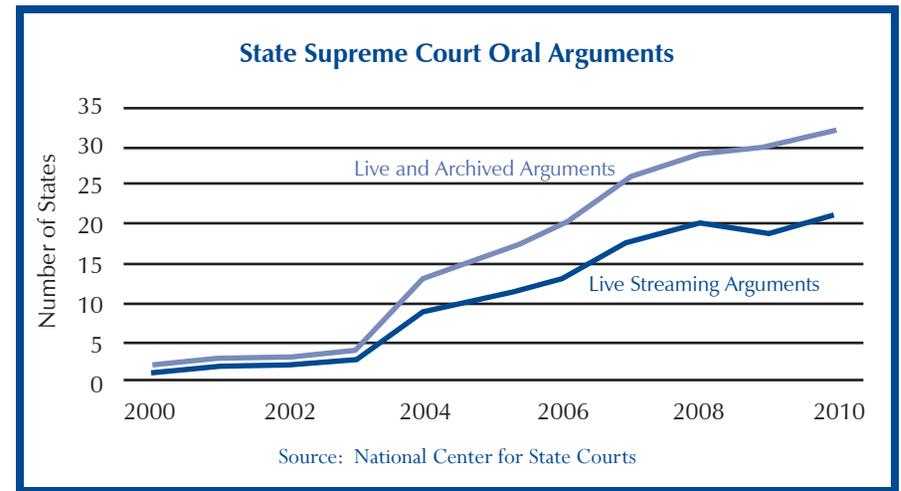
Release selected information online to allow the public easy access:

- Opinions
- Court’s calendar information
- Oral-argument schedule

Online access to archived arguments
Web streaming

Some state supreme courts are experimenting with releasing briefs and other case-specific documents online. Particularly in states that use e-filing procedures, it seems a logical next step to make at least some of these digital documents available online.⁴ Publishing information online about the court’s calendar and oral-argument schedule is another first-wave innovation that has made it much easier for the public to follow the workings of the court. Many courts post schedules on their Web sites that list information about oral-argument dates, opinion-release schedules, and other relevant court dates. True to the first wave, many state supreme court calendars are bare-bones, monthly listings of the days in which the court will hear oral arguments (often without listing which cases will be heard when) or are simply PDFs of the schedule document the court puts out on paper. The Illinois Supreme Court Web site, for example, links users to the term’s “Call of the Docket,” which appears to be a PDF of the oral-arguments schedule.

Another good example of first-wave data distribution is Web streaming. While trial courts have proven more cautious, state supreme courts have been on the forefront in Web streaming proceedings, both in live and archived format. A big reason state supreme courts have so readily embraced Web streaming relates to the nature of supreme court proceedings. Oral arguments do not feature witnesses and other trial theatrics that judges might be wary of posting online.⁵ In contrast, cerebral and (let us face it) often dry supreme court oral-argument broadcasts



do not threaten to undercut the dignity of the court.⁶ Currently, at least 29 state supreme courts provide Web streams of oral arguments. In some instances, such as in Florida, Indiana, Kansas, Kentucky, Massachusetts, Mississippi, New Mexico, and Ohio, the court broadcasts oral arguments live. Some state supreme court Web sites provide oral-argument audio only.⁷ The number of state supreme courts Web streaming oral arguments has steadily risen.

The Second Wave

As revolutionary as first-wave efforts are, sifting through a brief or watching an argument Web stream requires a level of ability and training (not to mention commitment of time) that many in the public simply do not have. These challenges call into question the ability of first-wave efforts to truly inform the public about the work of state supreme courts. In the past, courts often relied on members of the media to sift through information about the courts and inform the public. But as media budgets dwindle and the “court beat” becomes a thing of the past, fewer and fewer journalists have the skills to cover the courts adequately. Additionally, state supreme court outcomes, even before the recent downturn in media economics, have long been under-reported (see Haltom, 1998). Responding to the perceived need to do a better job of translating the work of the court for journalists and members of the public more generally, some state supreme courts are experimenting with “second-wave” approaches.

Second-wave efforts come in different forms.

A perfect example is case summarization.

At least 16 states currently provide case summaries of decisions handed down (Arizona, Colorado, Georgia, Illinois, Indiana, Iowa, Kentucky, Missouri, Minnesota, New York, Ohio, Rhode Island, South Carolina, Washington, West Virginia, and Wisconsin).

Taking yet a further step, at least 13 states provide summaries of *upcoming* cases on their Web sites (Arizona, California, Connecticut, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, South Carolina, Washington, West Virginia, and Wisconsin). Many state public information officers (PIOs) report being wary of case summarization. Assuming a court does

Second-Wave Efforts

Case Summarization

State Supreme Court Blogs

Integrated Online Calendar

not elect to summarize all cases it decides, one difficulty is identifying which cases to summarize. Another concern is that cases will be summarized inaccurately or with a perceived bias. The hesitation to summarize cases may be exacerbated at many courts by the lack of staff able to distill complex cases; not all PIOs and court clerks have legal training.

Another second-wave example is the state supreme court blog. North Dakota provides an excellent example of how state supreme courts can use blogs to interface with the public (see www.ndcourts.com). North Dakota’s state supreme court Web site features a blog that provides information about upcoming cases and released opinions (linking to summaries of new opinions and a searchable archive), appellate practice tips, rule amendments, justices, and so forth.

The Ohio State Supreme Court Web site provides another variation. Its Web site features “Ohio Judicial System News,” which includes general information and announcements about the judiciary statewide, and “Supreme Court Case Announcements,” which offers summaries of cases handed down, notices of dismissal, and so forth. The site provides the public an effective portal into the business of the court, updated daily and with useful links to dig deeper.

Some outsiders have taken it upon themselves to feed the second wave by creating “unofficial” state supreme court blogs that follow state supreme courts in their states. Examples include SCOTXBlog run by a Texas appellate attorney and Virginia’s SCOVAblog run by a Virginia legal periodical.

Another interesting second-wave technique is the integrated online calendar. North Dakota’s calendar function lists dates on which oral arguments for specific cases will be heard. Clicking on a case listed on the calendar links users to a range of information: a case summary, appellee and appellant’s own summary of the issues presented, and links to case-specific documents and materials. On January 9, 2011, for example, had any member of the public clicked on calendar listing *Interest of Vondal* (a case scheduled to be heard on January 10, 2011), the following impressively helpful information would appear:⁸

North Dakota Supreme Court Oral Arguments Calendar

9:00am Monday, January 10, 2011
In the Interest of Richard Raymond Vondal

20100221 State of North Dakota, Petitioner and Appellee v.
Richard Raymond Vondal, Respondent and Appellant

Appeal from: [South Central Judicial District, Morton County,
Judge Bruce A. Romanick](#)

Nature of Action: [Civil Commit of Sexual Predator](#)

Counsel: Appellant: [Susan Schmidt](#)
Appellee: [Brian David Grosinger](#), Asst. State's Attorney

Issues: Appellant's Statement of the Issues:
Did the Petitioner show by clear and convincing evidence that R.V.
is a sexually dangerous individual?

Appellee's Statement of the Issues:
Whether there was clear and convincing evidence that respondent
is a sexually dangerous individual.

Briefs: [Case Summary](#)
[Appellant Brief](#)
[Appellee Brief](#)

[Go to Docket](#)

Source: www.ndcourts.com/Calendar

Clicking on the link for counsel brings the user to a picture and contact information for attorneys arguing the case. Clicking on “Nature of Action” brings the user to a list of summaries and links to other cases that deal with civil commitment of sexual predators. In short, North Dakota’s calendar provides a gateway that allows users to research cases before the court from a number of angles with extraordinary ease and accessibility.

So far, relatively few state supreme courts have developed second-wave innovations. Because such efforts are so often personality driven (a motivated chief justice, an active and Internet-savvy clerk or PIO), it is unclear how many states supreme courts will do so going forward. What seems certain is that the more courts engage in first-wave dissemination, second-wave efforts—both inside and outside the court—will be needed to translate the work of the courts adequately for the public.

Taking up this call, the State Supreme Court Initiative, a joint project of the William & Mary Law School and the National Center for State Courts, is developing a state supreme court Web site that will feature both first- and second-wave information about state supreme courts. The site will serve as a repository for raw data about all 50 state supreme courts. The site will also include second-wave resources, such as a blog that analyzes state supreme court opinions and identifies trends in the supreme courts of the 50 states. This free resource will provide journalists, scholars, lawyers, and members of the public a centralized resource for first- and second-wave information about state supreme courts.⁹

ENDNOTES

¹ Although this categorization implies a continuum, the author would like to emphasize the nonlinear nature of information-dissemination technologies. Depending on what the future holds, some states may bypass the “first wave” and proceed directly to the second, third, fourth, or fifth.

² Several innovative, open-government organizations are using abundant raw government data, see, e.g., the Sunlight Foundation.

³ Those interested in subscribing to Alabama’s opinion database must fill out a paper form (the Web site will not process credit-card payments online).

⁴ State supreme courts already experimenting with releasing case documents online include Alaska, Connecticut, Florida, Kentucky, Missouri, Mississippi, Montana, New Hampshire, North Dakota, Ohio, Texas, West Virginia, and Wisconsin. It is important to note that some of these resources are available at a designated law school or state bar association Web site—i.e., not released directly from the court.

⁵ Starting in the late 1990s, some trial courts have offered trial Web casts. Florida’s 9th Judicial Circuit was an early innovator in bringing its first live trial to the Internet in 1999 (see Wickham, 2000). As of February 2004, the Florida Supreme Court placed a moratorium on trial Web casts and other releases of electronic court records (see Committee on Privacy and Court Records, Amended Administrative Order No. AOSC04-4, [Fla. 2004]). In 2005 the Florida Committee on Privacy and Court Records (2005) found that even a Florida state constitutional right of public access did “not include an affirmative right to compel publication of records on the Internet or the dissemination of records in electronic form.” Today, Florida’s Ninth Judicial Circuit provides Web casts of daily arraignments. Other courts have also experimented with broadcasting trials. For example, the Delaware Municipal Court in Delaware, Ohio used to Web cast trials but discontinued the program. Some courts are experimenting with Web casts of select archived hearings, i.e., not live (see, e.g., the Medina County Domestic Relations Court at Inside the Court Blogspot, 2008, and Kropko, 2005, about Web streaming trials in Medina County).

⁶ Note, of course, that this remains a big reason why the U.S. Supreme Court refuses to Web cast its oral arguments.

⁷ Since 2000, the U.S. Supreme Court has experimented with same-day audio release of selective oral arguments, but it has remained unclear how the Court chooses which cases it will release. In September 2010, the Court announced plans to release oral argument audios for all cases the Friday following the argument date.

⁸ Note that once the argument on North Dakota’s calendar is heard, information about the case is moved to the site’s searchable database with links to the recording of oral argument.

⁹ The Web site is currently under construction thanks to a generous grant from the State Justice Institute. Another of the State Supreme Court Initiative’s projects is to publish a set of best practices for court Web sites to help state supreme courts take advantage of the numerous ways technology can help state supreme courts inform the public.

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THE EVOLUTION OF A HIGH-TECHNOLOGY COURTROOM

Hon. Herbert B. Dixon, Jr.

Judge, Superior Court of the District of Columbia

The District of Columbia Courts are evaluating what works best in a high-tech courtroom for making presentations and instructing juries. The courts are also trying to determine whether presentation formats that seem most favored by jurors are in fact the most effective.

Over the last several years, interest in high-technology courtrooms has grown. Traditional litigators and judges whose skills were honed without the newfangled gadgets were not the fastest to embrace new technologies. As time passed, however, the population of old-school litigators dwindled and interest in litigating in high-technology courtrooms increased. I had the good fortune over the last two years to be involved with the design and construction of a high-technology courtroom and to be assigned to the courtroom and asked to promote use of the new technologies among the practitioners on my calendar.

Once the courtroom was in operation, I encouraged use of the courtroom's new technology at every opportunity. At the same time, the Research and Development Division of the D.C. Courts developed a survey to capture juror impressions concerning the use of technology during trials. At the end of each trial, I urged jurors to assist our evaluation efforts by completing the survey.

After several months operating this high-technology courtroom, including 11 serious and complex criminal jury trials, and survey responses from 141

94 percent of surveyed jurors agreed or strongly agreed "Overall, the use of technology in the courtroom improved my ability to serve as a juror in this case."

deliberating jurors and alternates, I am ready to share some observations about the evolving use and juror impressions of courtroom technology.

High-Technology Equipment in the Courtroom

Video Displays

There is fair debate concerning the preference for large monitors to which all eyes are directed versus smaller individual (or jointly shared) monitors installed in the jury box. Among counsel, the preference is for large monitors. The large monitors encourage more eye contact with the presenter until the jury's attention is directed to some aspect of the image on the monitor, whereas jurors with individual monitors often remain focused on their personal monitors rather than on the presenter. In the lawyers' view, there is a perceived loss of connection with the individual jurors.

In many technology-enabled courtrooms, images are projected on a screen by a liquid-crystal-display (LCD) projector. The equipment in my courtroom includes a 72" x 72" drop-down projection screen; a 5,500 lumen LCD projector; and, for jury and audience viewing, four 52-inch diagonal, high-definition flat-screen monitors. The LCD projector and screen provide an 85-inch diagonal image, which explains why the parties and I often prefer to project images of evidence on that screen for primary viewing. As is totally understandable, however, the projector image is larger and more easily seen, but the smaller monitor image is often superior in terms of sharpness and clarity. I believe that flat-screen monitors, with their superior image display and falling prices, offer the best hope for larger and more affordable video displays in technology-enhanced courtrooms.

Annotation Monitors

Annotation monitors allow witnesses to mark an exhibit with notations that can be preserved for later viewing. For example, the markings can show where a person was standing in an area shown in a particular picture or where a crucial event occurred on a particular piece of evidence, such as where a metal fracture occurred or where failed equipment was not properly aligned during manufacture or construction. Once the notations are made on the monitor, additional markings may be added to identify the witness responsible for the notations, all of which may be preserved by printing a color copy of the exhibit. When the next witness

97 percent of surveyed jurors agreed or strongly agreed that “Viewing the judge’s instructions on the monitors improved my understanding of the laws in the case and my responsibilities as a juror.”

is called, the original copy of the exhibit will be free of any markings that might influence that witness.

Witness Monitor

The witness stand should have its own monitor. This monitor should have the annotation feature that allows the witness to make marks electronically on the displayed image. A witness monitor also allows presentation of the evidence to the witness, not viewable by the jury, to elicit testimony concerning the authenticity and relevance of the exhibit. When the exhibit is moved into evidence, the exhibit then may be displayed on the other courtroom monitors for the jury.

Evidence Camera

An evidence camera is indispensable for a technology-ready courtroom. No other piece of equipment surpasses this item in its ability to encourage litigants to use technology during in-court proceedings. An evidence camera instantaneously converts a paper document or physical exhibit to an electronic image, with the ability to enlarge and reduce the image as needed. An evidence camera can enlarge, for example, a 4” x 6” photograph or the face of a wristwatch for all to see on the courtroom monitors or projection screen. A demonstration that often amazes courtroom observers is to see the back of a pre-2009 one-cent coin enlarged to an extent that shows not only the engraved Lincoln Memorial in significant detail, but also the engraved silhouette of Lincoln’s statue between the memorial’s two center columns.

Laptop Connections and Other Digital Input Locations

Because of the popularity of laptop computers for presenting evidence as digital images and sound, laptop inputs to the courtroom’s audio and image-display systems are a necessity. In my courtroom there are three such inputs, namely,

image and audio connections located at each of the two litigants’ tables and a third set of image and audio inputs at the speaker’s lectern. This configuration permits the two opposing sides each to have their individual input location and a spare input if another is needed. This is helpful if either or both inputs for the opposing parties should become disabled (which happened in my courtroom when some unauthorized person rearranged the furniture and snapped one of the fragile fiber-optic cables). Additionally, the judge’s computer on the bench may also transmit images and audio to the courtroom’s audio and image-display systems.

One cannot overlook that, instead of a PC-type device, a fair number of litigators use the Mac, iPad, and other Apple computers. My courtroom has the standard VGA PC connections for images and 3.5 mm connections for audio. There is an adaptor available for each Apple product, and it is probably a good idea to have these adaptors as standard equipment in the courtroom for those litigants who never considered that the courtroom’s audio and image-display systems might not be “Apple ready.”

Combo VCR/CD/DVD Player

The combo VCR/CD/DVD player was thought to be necessary equipment for a technology-ready courtroom, but the slow demise of tape media and increased popularity of laptop computers have diminished the use of such players. Although exhibits still occasionally surface that need legacy equipment, including cassette tapes, VHS tapes, and maybe even a Betamax tape, parties nearly always offer to play their audio and video exhibits from their laptop computers using the computer’s hard drive, a thumb drive, memory card, or the computer’s CD or DVD player. The flexibility of the laptop computer to use various storage media will render combo VCR/CD/DVD players obsolete.

Courtroom Printing and Electronic Storage of Exhibits

A color courtroom printer remains a staple of the technology-ready courtroom for printing images of exhibits on which witnesses have made electronic markings. In addition to printing copies of images and markings and other notations for review by the judge or jury during deliberations, paper copies are often needed to satisfy the primeval urge for paper backups just in case the electronic Xs and Os disappear into the ether.

97 percent of surveyed jurors agreed or strongly agreed “With the use of the courtroom technology, I could clearly see the evidence presented in the case.”

An interesting alternative is preserving exhibits and markings electronically and providing the jury a laptop computer, kiosk, or other device to scroll through all of the electronic exhibits. The arguments in favor of this alternative are that the resolution and clarity of the electronic image

are superior to the printed copy, the time delay (15 to 20 seconds or more—an interminable wait in the courtroom for the electronically marked exhibits to print) is obviated, and electronically preserved exhibits are immediately ready for input into the court’s electronic records system without scanning. Obviously, eliminating any need to make an electronic image of the paper copy saves time and avoids a further decrease in image quality.

Integrated Controller

The ability to control the source of images and sound into the courtroom’s video and audio system are handled through a unified controller that is integrated with the courtroom system. Most often, the controller is a touch screen that allows the judge or courtroom clerk to direct the source of the images displayed and sound heard on the courtroom’s video-display and sound systems. While it is possible to allow counsel to determine when a video is displayed or audio is played, it is normally best to leave “traffic cop” control in the hands of the judge or courtroom clerk trained to perform this job. If the judge is not interested in performing this function, the courtroom clerk must have the training to perform this job. Whether this function is performed by the judge or courtroom clerk is likely to be influenced by tradition and the judge’s preference. In my case, my courtroom clerk and I have duplicate controls that allow either of us to determine the source of the video and audio to be played on the courtroom’s system. The standard configuration now allows the controller to direct the image and sound from any source to a selected monitor or monitors. And, of course, the controller must have a “kill switch” that allows, in case Murphy’s Law is invoked, instantaneous termination of any image or sound. My “kill switch” is euphemistically labeled with the much milder term “clear system.”

The advanced features of an integrated controller system allow different images from separate sources to be displayed simultaneously, for example, showing an image from the evidence camera on monitor 1 while at the same time showing on monitor 2 a video from the prosecutor’s laptop; the image of a still photograph from the defense attorney’s laptop on monitor 3; a limiting instruction in PowerPoint from the judge’s computer on monitor 4; and so on. However, the knowledge of the system and mental dexterity that the judge or courtroom clerk need to operate such a system effectively and efficiently might be a little too much to ask under normal circumstances. Indeed, the complexities of such a system may result in (1) the advanced features being rarely used or (2) discouraging use of the courtroom’s technology altogether. For this reason, the more simplified configuration discussed earlier is the most practical design until the use of courtroom technology becomes more the rule than the exception.

86 percent of surveyed jurors agreed or strongly agreed that “When the attorneys used the technology to display exhibits on monitors and play audio on the courtroom’s main speakers, I better understood the evidence presented in the case.”

Wireless Installation

Once upon a time, installation of the controller system for displaying images from various courtroom sources required removing and raising the existing floor to install wire cables, fiber-optic cables, and other wires to connect the various image and sound sources (counsel’s laptop, the evidence camera, etc.). That effort in my assigned courtroom resulted in a three-inch higher floor, calling for a pathway from the audience section to the well of the court that is slightly inclined over a three-foot length. As one might have expected, I have seen numerous folks stumble when they did not notice the incline as they entered the well. Now, with vast improvement in wireless technology, retrofitting a courtroom to accommodate the integrated system that controls the connection between sources and the courtroom’s video and audio system does not require extensive and expensive removal and raising of the floor to accommodate cables.

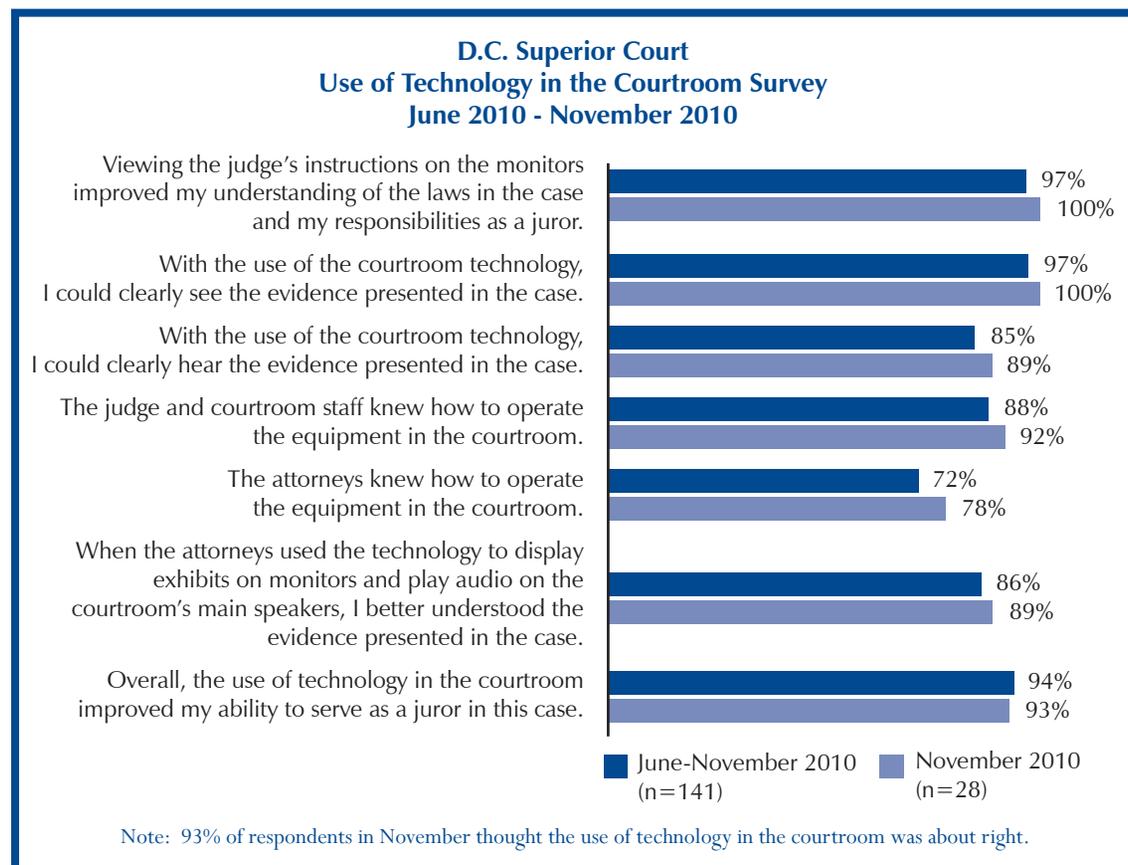
Remote Witness Testimony and Video Conferences

A video camera and broadband availability are essential for transmission or receipt of remote witness testimony or to conduct video conferences. Although remote witness testimony has occurred at an increasing rate over the last several years, even today it may be classified as occasional in civil trials and much less frequent in criminal trials. However, video conferencing does occur frequently in criminal arraignments and presentments, in status hearings and review hearings in dependency cases, and for remote language interpreting. With the availability of numerous online Web-conferencing solutions, any courtroom purporting to carry

the label “high-tech” must be able to transmit and receive remote witness testimony and conduct video conferences.

Juror Impressions Concerning Use of Technology During Trials

Over several months, I conducted 11 serious and complex criminal jury trials and presented surveys to the deliberating jurors and alternates after they were discharged from service. The surveys were intended to gather juror impressions concerning the effect, if any, the use of technology during the trials had on the jurors’ ability to see and hear the evidence and understand the instructions of law. Some aspects of the juror responses were very encouraging (see figure).



Final Thoughts

As time progresses, I expect all courts and counsel will improve their ability to use technology to enhance and improve the jury’s ability to see and hear the evidence and the court’s instructions. But, from personal experience, a court’s encouragement of the parties to use available technology accelerates that process. Some attorneys naturally are drawn to the use of technology in trials and other court hearings. Indeed, as I have urged and encouraged the use of the technology in my courtroom in complex and straightforward cases, I have noticed counsel gravitating to the use of the courtroom’s technology at a faster rate than previously experienced, which I can highlight with one example.

During one of my first trials during the survey interval, one defense attorney described himself several times by the redundant term “technology-challenged technophobe” to explain why he was making such limited use of the courtroom’s technology. The attorney probably thought this comment was necessary in his own defense. It was obvious during the trial that the prosecutor was making extensive use of the courtroom’s technology to project, for the benefit of the jury, enlarged images of videos, documents, and other evidence. In some of those instances the prosecutor directed the witness to mark the image where necessary to emphasize certain aspects of the testimony. However, something happened

to the defense attorney's way of thinking over the course of the trial. During a several-day recess before closing arguments, defense counsel prepared an outline of his closing argument using PowerPoint and projected a brief summary of the argument as he was making it. The PowerPoint summary projected at each stage of the argument was normally one sentence or less, including in some instances a topic heading or just a single word. It was obvious to me, and I am sure everyone else in the courtroom, that this was a well-prepared closing argument that touched all the important points. The attorney had obviously put significant thought into the order of his comments and the major points that he wanted to make. This self-proclaimed "technology-challenged" attorney gave the smoothest and most compelling closing argument that I had ever seen him make. This experiment became a transformational event. Since that time, PowerPoint-aided opening statements and closing arguments have become a staple for him, as has an increasing use of technology during trials. With this experience, my objective now is to increase the use of technology in trials, one lawyer at a time.

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IMPROVING COURT ACCESS: SOCIAL MEDIA

“But it’s not that complicated. Take a deep breath and realize this thing called social media was going on 100 years ago. It’s just building relationships.”

*G. M. Filisko, “Social Media or Snake Oil: Does Social Media Measure Up to the Hype?”
ABA Journal, January 2011*

SOCIAL MEDIA: A NEW WAY TO COMMUNICATE THAT CAN NO LONGER BE IGNORED

David W. Slayton

Director of Court Administration, Lubbock County Administrative Office of the Courts, Lubbock, Texas

During the recent royal wedding, there was some concern that the amount of social-media activity might actually cause the Internet to crash. While that phenomenon did not occur, Webtrends reported that over 1.25 million social-media entries were made in the days surrounding the event (retrieved from <http://mashable.com/2011/04/29/royal-wedding-infographic> on May 10, 2011). As was the case with the royal wedding, many people now depend exclusively upon social media to obtain the day's news, reviews of companies and products, and the latest information on services. These developments are sure to impact courts and the way that we provide information and services.

Courts must now decide not if we will embrace social media but when and to what degree.

For years courts have struggled with media relations. From whether to allow cameras in the courtroom to how to respond to a reporter's questions, the questions often outnumber the answers to issues that arise. With the explosion of social media, courts must now decide not if we will embrace social media

but when and to what degree. As recently stated by retired New Hampshire chief justice John T. Broderick, Jr., our customers of the future will demand the increased technology services provided by social-media tools. Their "expectations will be very high. Ours better rise to meet them" (National Association for Court Management Midyear Meeting, February 7, 2011).

Building on recent publications by the National Association for Court Management (*Managing the Message: The NACM Media Guide for Today's Courts*, 2010) and the Conference of Court Public Information Officers (*New Media and the Courts: The Current Status and a Look at the Future*, 2010), this edition of *Future Trends in State Courts* presents a series of four articles about social media and the courts:

- Katherine Bladow and Joyce Raby detail the different types of social-media tools available and lay out a detailed recipe for courts to utilize in developing a social-media plan.
- John Kostouros provides a viewpoint on the changing demographic of those in the media and how those changes provide opportunities for courts to have better community outreach and education.
- Laura Click describes the seismic shift caused by social media, describes the new landscape that exists in the new reality, and suggests four practical steps for courts to take.
- Michael S. Sommermeyer provides an example of how the Clark County, Nevada courts have been able to harness the strengths of social media to deal with crises in the court as well as educate the public about very important court programs.

All four of these articles take the issue of social media from theory to practice for implementation in your court. We hope you find this information useful as you plan for your court's transition into the new media age.

USING SOCIAL MEDIA TO SUPPORT SELF-REPRESENTED LITIGANTS AND INCREASE ACCESS TO JUSTICE

Katherine Bladow

Self-Represented Litigation Network

Joyce Raby

Self-Represented Litigation Network

In their 2010 report “New Media and the Courts,” the Conference of the Court Public Information Officers documented social media’s impact on the public’s trust and confidence in courts. In this article, we expand on their work, looking at how courts are using social media to increase access to justice and listing steps courts can follow to implement a social-media initiative.

Businesses, nonprofit organizations, and government agencies are using social media to engage with their customers, listen for immediate feedback, and share news. For many, this investment is paying off. Social media are helping them further their mission: allowing them to be more responsive, helping them educate their customers, and improving their reputation.

Among those experimenting with social media are state courts, which are not just using it to broadcast news. They are also using social media to serve their customers. Given budget cuts and the increase in self-represented litigants, courts are looking for cost-effective ways to reach the public and educate them about the legal system. The courts want to prevent litigants from becoming mired in the process, which wastes resources and frustrates litigants. Because of their potential reach and the minimal investment needed to start projects, social media can help courts serve their customers.

In this article, we will first focus on how courts are using social media to support self-represented litigants and increase access to justice. We will then suggest several ways that courts might use social media, which have been used successfully in other sectors but not yet tried by courts. Finally, we will outline the general steps that courts should follow when they implement social-media initiatives.

Because of their potential reach and the minimal investment needed to start projects, social media can help courts serve their customers.

What Is Social Media?

Social media is “the population of applications that enable online (or networked) discussion, participation and sharing. Each social media application enables interactive dialog, as opposed to traditional online applications that are essentially one way broadcasts” (Albrecht, 2010).

Many social-media tools exist. Three categories of tools will be examined.

Visual-Media Sharing

Visual-media-sharing Web sites were developed to host images, videos, and audio for people without the software, hardware, or technical skills needed to host their own. These sites greatly increase the number of people who can post and share visual media online. Examples of visual-media-sharing sites include Flickr, YouTube, and Vimeo.

Social Networking

On social-networking sites, people or organizations create profiles, connect with other people, and share messages, images, and videos with those connections. Facebook, LinkedIn, and MySpace are the most well known social-networking sites, but many more exist, including niche sites for the legal community, like Martindale-Hubbell Connected and LegallyMinded.

Microblogging

Microbloggers publish short, online messages that include text, images, videos, or audio. These messages are viewable by either the public or a restricted group. Examples of popular microblogging sites are Twitter, Tumblr, and Posterous.

How Are Courts Using Social Media?

Using social media to support self-represented litigants is a new trend. Several courts have gone beyond using social media to distribute general court information and news and have started to publicize resources available to help self-represented litigants. The following sections describe how courts have been using specific social-media tools to reach self-represented litigants.

Visual-Media Sharing

Posting videos on visual-media-sharing sites is the most popular method of using social media to share information with self-represented litigants. These short videos, usually one to six minutes, educate litigants about what to expect when filling out forms, filing documents with the clerk, or appearing in court. Addressing the common questions of self-represented litigants, these videos help both litigants and court staff. Self-represented litigants can review the videos at their convenience as they prepare their cases. Better-prepared litigants ask court clerks and judges fewer questions and proceed more quickly. Because the video scripts have been thoughtfully prepared and thoroughly reviewed, court staff can

refer litigants to the videos and avoid situations where they may unintentionally provide legal advice instead of legal information.

The Indiana Supreme Court was one of the first courts to post videos for self-represented litigants on a visual-media-sharing site. Their YouTube channel was established in September 2008. As of January 2011, 129 videos have been posted, covering a variety of issues, including representing oneself in a family-law matter, mediation, and foreclosure-settlement conferences. These videos have been viewed over 137,000 times (see www.youtube.com/user/incourts).

The California Administrative Office of the Courts (CA AOC) has also posted videos on YouTube. Since 2009, videos on this channel have been viewed 4,300 times. The CA AOC added a self-help section in January 2011 with 11 videos that answer questions about mediation and arbitration, small-claims court, and restraining orders (see www.youtube.com/californiacourts#g/c/0FADD5544E020A3B).

Social Networking

Courts are only beginning to use social-networking sites, such as Facebook, MySpace, and LinkedIn, to assist self-represented litigants. Like most other institutions using these tools, courts are rarely creating new material to post on social-networking sites. More often, they link to existing materials to remind people that these resources are available and to encourage them to share the information.

Most courts that use Facebook are local courts, and they are primarily communicating information to the public about courthouse activities and operations: announcements of new staff and judges, courthouse-closure dates, and specific court events. Several of these courts also integrate news for self-represented litigants with their public-information announcements. An excellent example of this type of Facebook page comes from the Superior Court of Arizona in Maricopa County. Recent updates on their page announce the creation of a new veteran's court, the date when a newly appointed judge will be sworn in, and the news that the law library will distribute federal tax packets to the public (see www.facebook.com/pages/Superior-Court-of-Arizona-in-Maricopa-County/324889836882).



Indiana Supreme Court, YouTube Instructional Video

A few Facebook pages go further. Their intended audience for all of the information they post is self-represented litigants. For example, the Milwaukee Justice Center, which uses “collaborative partnerships to provide free legal assistance to Milwaukee County’s unrepresented litigants through court-based self-help desks and legal resources” and is housed in the Milwaukee County Courthouse, has this type of Facebook page. Their updates routinely announce legal clinics and how many individuals the center serves on a given day. They also occasionally request donations and recognize volunteers (see www.facebook.com/pages/The-Milwaukee-Justice-Center/299854630634).

Access-to-justice commissions, which are created by courts, appear to be using social-networking sites the most. The South Carolina Access to Justice Commission, one of the first commissions to use Facebook, has posted a number of self-help resources on their page. They also engage their community by asking for feedback. For example, they have created animated movies using prefabricated characters and typed scripts to generate dialogue with Xtranormal (www.xtranormal.com). These movies are clearly experiments, and the commission has asked for feedback and guidance on whether the animations are easy to use and helpful (see www.facebook.com/pages/South-Carolina-Access-to-Justice-Commission/144084714749).

In addition to official pages, a number of unofficial entries for courts also exist on Facebook. These entries are created when people list a court as an employer or as a place where they have been. For example:

- An entry for the Alaska Court System Family Law Self Help Center (www.facebook.com/pages/Alaska-Court-System-Family-Law-Self-Help/103918533007497) displays the center’s location and contact information. This entry was created when someone told Facebook that he had been there.
- An entry for the Superior Court of California, County of Los Angeles, Inglewood Self-Help Center (www.facebook.com/pages/Los-Angeles-Superior-Court-JusticeCorps-Inglewood-Self-Help-Center/114823355201679) only displays the name of the court. This entry was created when an employee or volunteer identified the center as her workplace.



South Carolina’s Access to Justice Commission, Facebook Page

While the two examples above were likely created unintentionally, any Facebook member could create unofficial court entries. Aside from the potential impact on a court’s reputation, unofficial pages can also impede access to justice. Looking for a court on Facebook, self-represented litigants may find an unofficial entry, assume unknowingly that it is a court’s official page, and act based on incorrect or misleading information posted on that page. Since preventing people from creating unofficial entries is not possible, the best solution for this problem is to create an official court page, even if that page will not be used to actively share information. Alternatively, if a court finds someone impersonating a court and violating Facebook’s terms and conditions, the court can ask for the page to be removed.

Microblogging

Of the three categories of social-media tools discussed in this report, microblogging has the lowest adoption rate. Only around 25 courts use Twitter,¹ and no courts were found on services like Tumblr or Posterous. Nevertheless, 2 of the 25 courts on Twitter are delivering information specifically for self-represented litigants: the Milwaukee Justice Center and the New York State Courts Access to Justice Program.



New York State CourtHelp, Tweet

In addition to its Facebook page, the Milwaukee Justice Center also has a Twitter account. Their updates on Facebook and Twitter are the same. Using a tool built into Facebook, each of their updates are posted to Twitter automatically (see twitter.com/MKEJusticeCtr).

While it appears to be working for the Milwaukee Justice

Centers, courts should use caution when automatically posting content. Court staff still need to respond to people who ask questions or comment on updates on all of the sites where the update is posted even if content is posted automatically.

The second court on Twitter that delivers information for self-represented litigants is the New York State Courts Access to Justice Program. They post about ten times a month, announcing self-help clinics, new self-help forms, volunteer lawyer trainings, and annual reports (see twitter.com/NYCourtsA2J).

Additional Opportunities for Courts to Explore

Compared to other sectors, courts are only beginning to experiment with using social media to serve customers. Because other institutions have been using these tools longer, courts would be wise to look to these institutions for successful initiatives to replicate as well as for best practices to follow when using social media.

After a review of what other institutions have done, the following three ideas, which other institutions have implemented successfully, stand out as initiatives that may be worth replicating.

Self-Help-Focused Blogs

Courts should consider creating blogs modeled after My New York Legal Help (www.mynewyorklegalhelp.com), a blog managed by LawHelp.org/NY. Their timely blog posts publicize new and existing content on LawHelp.org/NY and other legal-information Web sites. Posts are also translated into Spanish and published on *Mi Ayuda Legal Nueva York* (www.miayudalegalnuevayork.com). A court could publish similar posts, which would alert the public to existing resources on their Web site as well as make it easier for self-represented litigants to find this content online.

Twitter as a Help Desk

Courts should consider using Twitter as an online help desk. This has been extremely successful for businesses, such as Comcast, Home Depot, and Southwest Airlines. Staff could refer people to online resources to answer questions like “Where can I find an attorney?” “What self-help services exist?” and “When is the court open?” Answers would be public and searchable, so others would also benefit from each question answered.

Certainly, the questions that could be answered via Twitter would have to be limited to those asking for legal information, and many policy issues would need to be addressed before this type of initiative could launch. Nevertheless, this activity could significantly increase the public’s ability to interact with a court, which could also dramatically improve a court’s reputation.

Integrating Video into Web Site Content

Courts should embed the videos that they post on YouTube into their existing Web sites. For example, courts could replicate the self-help center Web sites available in Illinois.² These Web sites, which include a video welcome from each jurisdiction’s chief judge, were developed through a partnership between the courts and their access-to-justice partners, including Illinois Legal Aid Online and the Illinois Coalition of Equal Justice. When these sites were initially developed, online visual-media-sharing sites had not been widely adopted, and Illinois Legal Aid Online developed their own platform to stream the videos. Now courts could develop these types of initiatives much more quickly and cheaply by using YouTube instead.

Implementing Social-Media Projects

Implementing a social-media initiative requires five steps: establish a goal, pick a tool, pilot the project, evaluate success, and revise and repeat.

Establish a Goal

A court should identify a small task or goal to experiment with—perhaps increasing participation in a legal clinic or educating individuals about filling out a set of family-law forms. Creating a small, simple, and measurable goal for a social-media effort reduces implementation time, makes evaluation of its success easier, and allows a court to modify their effort based on evaluation feedback faster.

Pick a Tool

Once a goal has been established, a court should select the tool or tools it will use. Do not assume that everyone is on Facebook. Doing some preliminary data gathering can ensure that the tools selected are appropriate to the targeted population. A court might gather data by asking self-represented litigants what social-media tools they use and how often they use them, as well as if they used online tools before coming to court, and if so, what tools they used. This information will help the court identify the social-media tools that their customers use and the tools the court should consider using. Courts that are just beginning to use social media would be wise to limit the number of different tools they use until they have more experience with social media.

Pilot the Project

After a court knows what it wants to accomplish and the tool that it will use, the project is ready to begin. Creating a Facebook page, Twitter account, or YouTube channel is relatively easy, as is posting content.

Social media simply allow courts to conduct outreach programs online and to reach the public where they are already congregating, leveraging the limited resources courts have to support self-represented litigants and increasing access to justice.

Choosing the appropriate person to staff the project deserves some thought. Posting content and responding to questions and comments requires someone who has knowledge of court policies, who can be trusted to represent the court in a professional manner, and who understands the needs of self-represented litigants. This role can be contracted out, but it is often more effective if performed by court staff.

Courts should consider current personnel who use social media personally as a great resource. Comfort with social media will reduce the overall learning curve and may provide an avenue of professional growth.

Whether or not staff are comfortable with social media, a policy should be established that clearly articulates the parameters for posting content and dealing with both positive and negative feedback posted by the public. Resources and example policies are available on the Social Media and the Courts Resource Guide on the NCSC Web site.

Courts should also draft a process for when and how to respond to positive and negative comments. The U.S. Air Force has developed an excellent example, the Air Force Web Posting Response Assessment,³ that courts can model their own process on.

Evaluate Success

As a court pilots its initiative, data should be gathered to evaluate its success. The evaluation of a social-media effort does not need to be formal or expensive; simple quantitative data can be gathered online rather easily. Metrics should be comprehensive enough to guide future social-media use. Social-media efforts lend themselves to an iterative evaluation process, meaning that regular and consistent evaluation can inform social-media projects regularly and on a shortened cycle—weeks rather than months.

Revise and Repeat

After the initial social-media effort is evaluated, a court can decide if additional effort is warranted or if changes need to be made. Perhaps evaluation data suggest that self-represented litigants using social media are not interested in domestic-

violence materials. A court might revise their project to publicize its foreclosure resources instead. Revising social-media efforts to reflect fluctuating needs and expectations represents a long-term benefit to courts, enhancing their ability to be responsive to an ever-changing environment.

Conclusion

Using social media to support self-represented litigants may be a new trend for courts, but educating self-represented litigants about the legal system is not. As early as the 1994-1995 edition, the *Report on Trends in State Courts* covered court outreach programs.⁴ Social media simply allow courts to conduct those outreach programs online and to reach the public where they are already congregating, leveraging the limited resources courts have to support the self-represented and increasing access to justice.

ENDNOTES

¹ A list of courts that are using Twitter is available at <http://twitter.com/accesstojustice/courts-court-self-help-8>. To be added to this list, contact technolablog@gmail.com or @accesstojustice on Twitter.

² A list of the self-help center Web sites is available at www.illinoislegalaid.org/index.cfm?fuseaction=directory.selfHelpCenterList

³ *Wikipedia*, “United States Air Force Web Posting Response,” http://en.wikipedia.org/wiki/United_States_Air_Force_Web_Posting_Response

⁴ “Increased Role for Judges in Assisting Pro Se Litigants,” *Report on Trends in the State Courts*, 1994-1995 Edition (Williamsburg, VA: National Center for State Courts, 1996): 45-46. <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=428>

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WHO ARE THOSE GUYS? COURTS FACE A RAPIDLY CHANGING NEWS INDUSTRY

John Kostouros

Communications Director, Minnesota Judicial Branch

Traditional news organizations have been slashing news staffs, and many veteran court reporters have left the profession. New models of news coverage are emerging, bringing new challenges and new opportunities for courts wishing to communicate with the public.

Public-opinion studies have revealed that much of what the public knows about the courts and the justice system it learned from newspapers and television. That is why court professionals, looking for ways to educate the public about the role and the work of the courts and to promote court programs and innovations, have historically focused their efforts on reporters and editorial writers from traditional news organizations: newspapers, television news programs, and radio news staffs.

Court staffs are increasingly seeing young, inexperienced reporters who seem to know little about how courts function or the role of the courts in our democracy or our justice system.

But the recession and structural changes in how companies advertise and reach consumers have led to thousands of layoffs at newspapers and television stations and the demise of several once prominent newspapers. At the same time, competition from new, free Internet-based news providers has cost newspapers paid subscribers and TV news viewers, leaving editors scrambling to identify new editorial strategies that will attract readers and viewers.

The downsizing of newspaper and television news staffs and the near elimination of radio news staffs has resulted in the departure of many veteran court reporters,

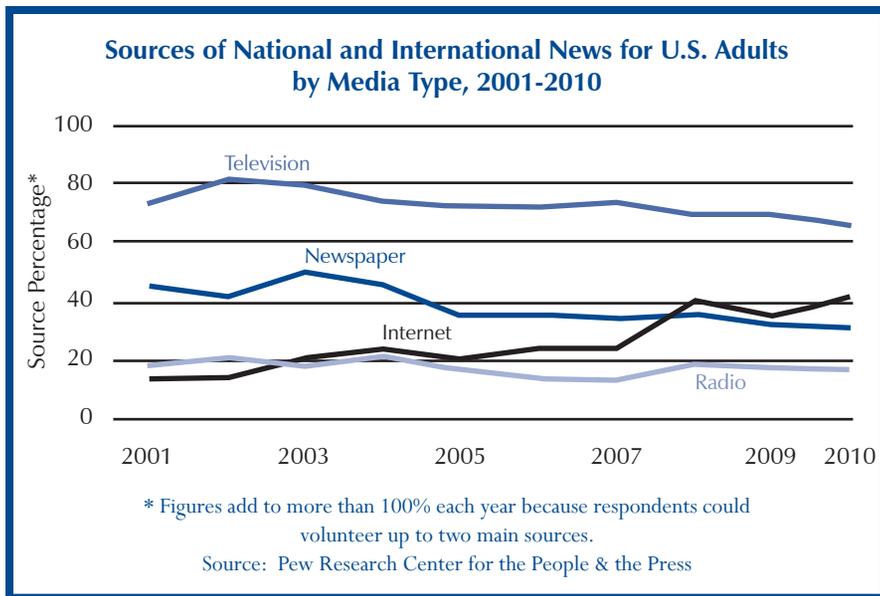
who had spent years learning the ins and outs of the complex legal system. Court staffs are increasingly seeing young, inexperienced reporters who seem to know little about how courts function or the role of the courts in our democracy or our justice system. The combination of an inexperienced reporter and a high-profile court case can be a volatile mix.

A case in point: The New Jersey Supreme Court remanded to a special master part of a high-profile case involving the state and an advocacy group. The state filed a motion asking the court to spell out in more detail what evidence would be admissible for consideration. The court denied the motion, but indicated in their order that the special master could consider whatever evidence he felt was relevant.

A new reporter with no experience covering the supreme court or the practice of law in New Jersey misunderstood the court's action and completely reversed the practical outcome of the court's order. Without calling the court for assistance, the reporter wrote a story announcing that the court had disallowed the special master from considering the broader budgetary issues surrounding the case. The story was picked up by another news outlet, which did not call the court to confirm the validity of the first story. A state senator saw the story and issued a press release blasting the supreme court for ignoring the state's fiscal crisis. Calls to both reporters succeeded in getting the stories corrected, but by that point, the damage had been done.

New Models Emerge

It is not just inexperienced reporters who are bringing new challenges to courts wanting to communicate with the public. New models of news gathering are emerging, most of which are tied to the Internet. Some are variations on the traditional theme. Several newspapers have discontinued publishing a paper product and shifted their efforts to a Web site, usually with much smaller news staffs. The transition to the Web has created pressure to generate more graphic images, something that can be hard to do in states that do not allow cameras in their trial courts, and to focus heavily on dramatic criminal trials. Former newspaper operations in Detroit, Las Vegas, and Denver now publish only via the Web.



Several cities have seen the emergence of new Web-only news operations. The Web news entities vary in purpose from trying to be an online newspaper to being an aggregator of stories produced elsewhere. Many are staffed by veteran reporters who have left their newspaper or television news jobs and are working for reduced pay. Many observers question what will happen to the quality of Web news products when those experienced reporters and editors decide to retire or tire of working for low pay. Grants from foundations and donations provide much of the financial support for these efforts.

Another new entity, which tends to go by the name of “citizen journalism,” has emerged in several cities. These Web-based operations tend to have a small staff and rely on reports from contributors, some of whom are community activists or advocates for a particular cause. The *Twin Cities Daily Planet* in Minneapolis invites anyone who has an interest to “become a Daily Planet Citizen journalist.” Grants from local community foundations provide most of the financial support. Coverage tends to range widely, from stories about local neighborhood councils to observations about national or foreign events. The quality and accuracy of the reporting also varies.

Tennessee Report (www.tnreport.com), which calls itself a nonprofit, donor-supported news service, focuses mostly on state government. *Tennessee Report* says it “strives to advance the understanding of state spending, programs, regulation and legislative activities that influence commerce, culture, liberty and the role of government in Tennessee.” Their motto is “Good journalism, Free journalism. We’re volunteering. You’re supporting.”

Sometimes one of these new entities ends up becoming a major player in a story. When the 2008 Minnesota U.S. Senate race ended in a virtual dead heat, it took a recount, a court trial, and a ruling by the Minnesota Supreme Court to decide the winner. The organization that provided wall-to-wall Webcasting of the trial and the supreme court hearing was not a local newspaper or television station, which had said they did not have the resources to cover every day of the months long battle. Instead, a relatively new citizen-journalism entity called *The Uptake*, which specializes in live Webcasting of public hearings and events, offered to provide the coverage.

Court staff were initially reluctant to rely on *The Uptake* in such a high-profile case, not having worked with them or even heard of them before the case. But early experience demonstrated that the organization was able to provide a quality live Webcast, and *The Uptake* became the main source of Web-based coverage. After the trial, numerous commentators praised the courts for allowing the transparency provided by the daily Webcasting.

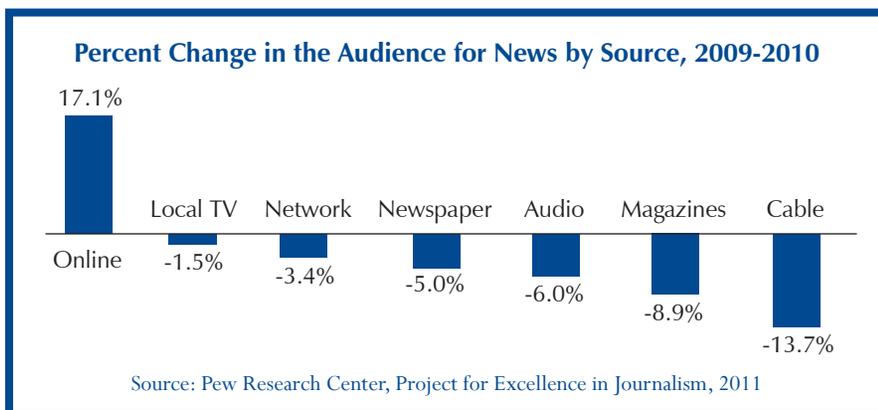
Washington, D.C. observers report that one of the leading sources of news about the trial over the murder of former congressional aid Chandra Levy was provided by a Web site operated by amateur bloggers interested in the case. Even local newspaper and TV reporters used the site to keep up with the trial.

The influx of untrained citizen reporters into a world once reserved for trained and credentialed journalists overseen by professional editors includes “bloggers”—writers who operate their own Web sites and report unfiltered by editors. Sometimes the bloggers become the source of information for newspaper and TV reporters. However, when the reports are republished without independent verification, misinformation can leak into even a professionally produced newspaper or TV news program.

The line between journalists and nonjournalists was once clear. It is not anymore, and court staff are being approached by a wide variety of information seekers wanting the kind of special access to court records, hearings, and assistance that has traditionally been afforded newspaper and television reporters. The trend can be especially challenging when it comes time to decide who gets into a courtroom with limited seating for a high-profile trial. With few rules to guide them, court staff are forced to decide whether citizen journalists should be allowed to sit in the section reserved for news media when anyone can call themselves a citizen journalist. The topic has been much debated in recent years by members of the Conference of Court Public Information Officers (CCPIO), both at their annual meetings and on their e-mail discussion group.

Managers of the Minnesota Capitol landed in the middle of a heated debate when *The Uptake* wanted to rent space historically reserved for credentialed news media. Access was eventually granted *The Uptake*, but not without strong opposition from some traditional journalists, who worried that *The Uptake* would not play by the same rules of fairness and professional courtesy in practice at the capitol newsroom for decades.

The Society of Professional Journalists, which has chapters in many states, promotes a code of professional conduct, and often hosts educational conferences for working journalists, has loosened its membership requirements in reaction to the changing times. “Our concern is not with deciding who is or is not a journalist,” SPJ



president Hagit Limor told the *Salt Lake City Tribune*. “Rather, we want to expose everyone to good journalistic practices.”

“Whether they be bloggers, content aggregators or even writers or broadcasters who promote a particular political or social agenda, we’d rather not have them out there saying, ‘I’m not a journalist so I don’t have to follow any rules,’” Limor told the newspaper.

The End of Newspapers?

Much has been made of several studies showing that newspapers and TV news programs are losing a growing share of their audience to Web-based news sources, especially among young adults. A study by the Pew Research Center for the People and the Press found that in 2010, for the first time, the Internet had surpassed television as the main source of national and international news for people under 30. Since 2007, the number of 18 to 29 year olds citing the Internet as their main source had nearly doubled, from 34 percent to 65 percent.

It is not just the young who are turning to the Internet for their news. The same survey found that among those 30 to 49, the Internet is on track to equal or surpass television as their main source of national and international news. Currently, 48 percent of those surveyed said the Internet is their main source of news. Even older Americans are turning to their computers for news, with 34 percent of respondents 50 to 64 saying the Internet was now their main news source. It is worth pointing out, however, that local television news programs and newspapers remain the main sources of local news for most people.

It is also worth noting that a 2010 study found that the most viewed Internet news sites were actually produced by “legacy media,” the name now commonly used to describe traditional news sources such as newspapers and television news programs. In other words, while it is true that more and more Americans are turning to the Internet for their news, much of the news they are reading online is being produced by newspaper and TV news staffs.

. . . Court staff are forced to decide whether citizen journalists should be allowed to sit in the section reserved for news media when anyone can call themselves a citizen journalist.

Reporters' Roles Are Changing

It is not just the news platform that is changing. The work journalists are being required to do is changing, also. Newspapers often require reporters to post an early version of a story on the paper's Web site the day before the story appears in the newspaper. No longer do reporters have until evening to make sure their stories are complete and accurate. Reporters concede that the pressure to post their stories quickly results in more errors and misinterpretations. The good news for court staffs is that by monitoring local-news Web sites during the day they can sometimes correct an inaccurate story before it appears in the next day's newspaper.

Television reporters have seen their workload skyrocket in recent years as local stations have programmed multiple news and information programs throughout the day in addition to their traditional evening news programs. The pressure to create multiple stories each day, as well as multiple versions of the same story as the day goes on, leaves TV reporters with little time to research and fully understand the details and implications of a story. It can also make them less available to attend court-sponsored educational programs or produce stories about court-community outreach events.

What Can Courts Do?

The arrival of many inexperienced and, in many cases, low-skilled news reporters has meant new challenges for courts. How do we ensure that their court reporting is accurate and complete? One approach has been to add citizen journalists and bloggers to the distribution list for court news releases. Another is to prepare briefing materials in the form of a news story that can be quickly absorbed and even copied by inexperienced reporters.

Some courts that have for years been offering "Law School for Journalists" or educational workshops for reporters and editors are opening them up to citizen journalists. When the Minnesota Court Information Office hosted workshops on access to court records via the Internet, several of the 32 reporters and editors who attended were from the *Twin Cities Daily Planet*.

Many court public information offices have developed media guides to assist inexperienced reporters in covering court stories. Many are posted on state court Web sites. In 2010 the National Association for Court Management (NACM) published a media guide produced by court public information officers that included helpful hints for court staffs (www.nacmnet.org). A list of these and other resources can be found on the National Center for State Courts Web site (www.ncsc.org).

Courts have started posting videos of court proceedings, as well as court orders and appellate opinions, on their Web sites, making it easy for less experienced reporters to view the material. It also allows the news organization to link to the material from their Web sites, giving viewers immediate access to the source of the story. Posting videos of hearings and court orders and opinions has the added benefit of allowing members of the public to bypass the filter of news reports and view and make their own judgments about court actions.

Conclusion

The changing world of news gathering and publishing is creating new challenges for courts. Efforts to educate inexperienced reporters from traditional and newer news organizations about the complex world of courts can be time-consuming and occasionally frustrating. But it can also enhance the accuracy and completeness of court reporting. One court public information officer took a call from a new local television reporter who did not know the difference between a trial and an appellate court. The officer patiently explained the role of each in the legal system.

The changes in the news industry are also creating new opportunities for courts. Many court information officers report that because the newer organizations often have small staffs, they are more open to reporting information about court programs or activities in the community than traditional news outlets.

The new news outlets are making it easier for citizens to access court records and rulings pertinent to a story. The hope is that this new access will help citizens to better understand the role of the courts in our democracy and in our justice system.

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FROM SKETCH PADS TO SMART PHONES: HOW SOCIAL MEDIA HAS CHANGED COVERAGE OF THE JUDICIARY

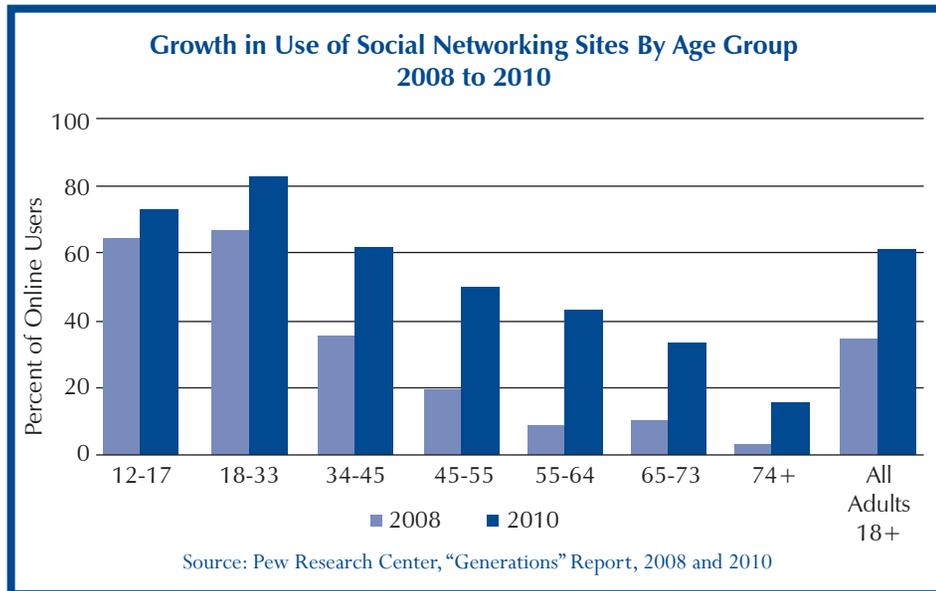
Laura Click

Public Information Officer, Tennessee Supreme Court

The advent of social media has transformed the way journalists report the news. Courts must educate themselves about the seismic shift in the media landscape to have a better understanding of how these changes will impact the courts.

“Verdict: Death.”

With those two simple words, Jamie Satterfield, a reporter from the *Knoxville News Sentinel*, let her hundreds of Twitter followers know about the verdict in the double homicide and torture of a young couple from Knoxville.



She was not alone. A number of Knoxville-area reporters—both from TV and print publications—also gave their play-by-play reporting of the trial via Twitter. And on top of the official reporters, hundreds of people watching the trial online or on TV chimed in with their thoughts throughout the trial.

The Christian-Newsom murder trials in Knoxville were nearly two years ago. Since then, social-media coverage of trials has expanded considerably as the popularity of social networks, and the media’s use of them, has increased.

The growing trend of Twitter reporting gained national attention in the recent home-invasion-and-murder trial of Steven J. Hayes in Cheshire, Connecticut. Although cameras were not allowed in the courtroom, the judge permitted the use of social media via smart phones and computers. Reporters used the opportunity to paint a picture of the proceeding in 140-character bursts. According to the *New York Times*, more than 140,000 tweets were sent during the Cheshire trial.

This phenomenon is no longer the exception. Twitter reporting is increasingly becoming the norm in courtrooms across the country.

The courts have long struggled with how to handle media coverage of the courts. Despite it being a decades-old medium, video cameras and photography are still not allowed in many courtrooms. Now the courts are being forced to consider this brave new technology that is knocking on their doors. For many courts still grappling with the idea of camera coverage in their courtrooms, the prospect of allowing social-media coverage may seem preposterous. However, like the Cheshire trial, allowing reporters to use social media might be a way to bridge the gap between allowing no media coverage and allowing cameras in the courtroom.

Instead of satellite feeds and expensive video equipment, reporters only need a smart phone to do the job. Because it is inconspicuous, it would allay the concerns many judges have about the obtrusive nature of television cameras or photography. And this approach offers the public a way to get information about the proceeding as it happens in courts that do not allow video coverage.

... Allowing reporters to use social media might be a way to bridge the gap between allowing no media coverage and allowing cameras in the courtroom.

That said, social-media coverage of courtroom proceedings is far from perfect. Because this style of reporting and the technology itself is relatively new, reporters are forced to learn on their feet and figure out the best practices as they go. Additionally, it opens up the possibility for testimony to be reported that may ultimately be stricken from the record.

So, what does all of this mean for the judiciary? There are several key ways coverage of the judicial branch has shifted since social media infiltrated courtrooms across the country.

News Has Become Instantaneous

One of the most obvious changes that social media created in media coverage is the rapid pace information is disseminated. Although the Internet has been around for a number of years, it takes much longer to get a story posted on a Web site than to deliver a verdict with a tweet. Thanks to social media, news is shorter and faster than ever before.

The upside to this is that courts have the opportunity to see a reporter's thoughts and analysis as a proceeding is taking place. For statewide court systems, this can be particularly useful as it allows court personnel to track what is going on in trials across the state without having to be in the courtroom.

Everyone Is a Journalist

In the world of social media, the line between citizen and journalist has become increasingly blurred. A person only needs a smart phone or laptop to share information on a social network or write an article on a blog. No credentials, training, or background are required.

This brings up the question, *Who is a journalist?*

The question is a perplexing one for courts to answer. While the courts should maintain a level of openness, it is difficult to ensure accuracy and quality of coverage from people who are not trained media professionals or familiar with the legal system. Additionally, many citizen journalists do not have the proper equipment to serve as pool cameras in proceedings.

In a Florida trial court, the wife of a defendant posed as a journalist in hopes of being allowed to use her video camera in a court proceeding. She was thwarted by a court public information officer who cited a Florida statute that outlines what is considered a "professional journalist." Having such rules in place stymie those without the proper credentials to cover proceedings.

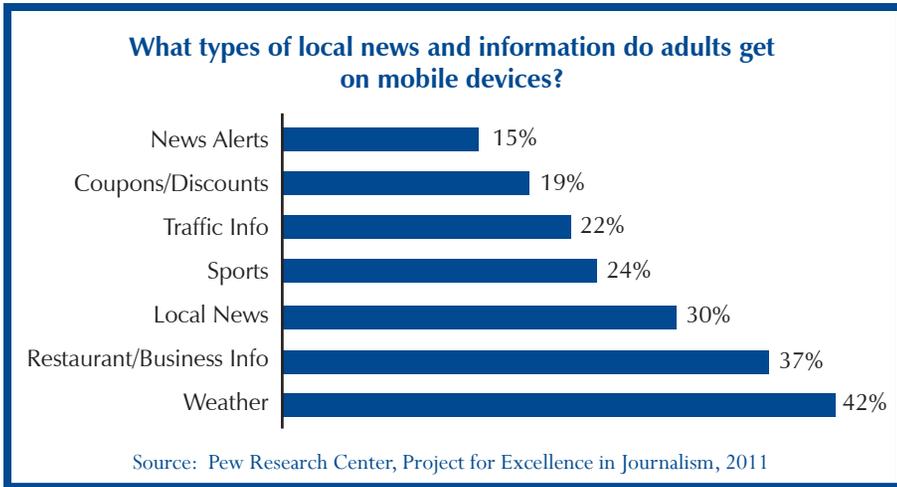
On the flip side of the coin, shrinking budgets and staff have created gaping holes in the media's coverage of the courts. Why not let citizen journalists fill the void? And should not the courts strive to make the proceedings open to help further their reach?

There are no easy answers, but the courts must consider developing rules to make it easier for court staff to know where to draw the line.

The Filter of an Editor Is Lost

Although social media offers the advantage of immediacy, it also lacks the value of an editor's eye. Tweets fly as quickly as reporters can type them with their thumbs. As a result, reporters are forced to make split-second decisions on how and what to share with their audience.

Consider the Christian-Newsom murder trials. Although video coverage was allowed, the cameras did not show the graphic photos of the victims used during testimony. However, the reporters who were tweeting were able to describe what they saw, leaving reporters to determine how far to take their coverage. On the other end of the spectrum, one reporter received flak for taking a casual tone during her coverage—injecting humor into tweets or sharing inane details such as what the defendants were wearing and what the jury had for lunch.



With the lack of editorial filter, reporters are left to both write and decide what is appropriate for their audience. This certainly opens the door for all sorts of potential problems.

The News Is a Conversation

In recent years, news has become increasingly a two-way conversation. We have seen this for several years now as many news organizations allow comments on their articles. This technology offers incredible opportunities for the public to engage in a dialogue with the media and share their insights. However, the conversational nature of news has presented its own set of challenges.

In some instances, reporters have waded into the debate to clarify their story, just as Jamie Satterfield did in the Christian-Newsom case. In others, editors have closed the comments on certain stories because they have become so corrosive and egregious. And the rest of the time, there are plenty of comments that are simply untrue. Because the public is entitled to their opinion, how can the courts control inaccuracies that spread in the public eye? Unfortunately, we cannot.

The challenge for courts is to keep accurate information in the public forum and help educate citizens and the media about how the courts work. Although courts

should not wade into the debate, disseminating useful, accurate information through social media may help keep false statements at bay.

A New Audience Is Reached

Despite all of its downfalls, social media offers the tremendous benefit of reaching an audience that may not typically read about the courts. Social-media use skews to a younger audience, which creates a great opportunity to inform and educate this population about how the legal system works.

Instead of relying solely on journalists to disseminate information about the judicial branch, courts can employ social media to make their own news. Twitter, Facebook, YouTube, Flickr, and blogs offer a unique opportunity to reach the public in the places where they already hang out online. This is perhaps one of the biggest shifts in how media has changed. Although press releases and traditional media channels are still valuable, courts have the unique opportunity to spread information without relying solely on the press to do all the legwork.

A number of courts across the country use social media to proactively inform the public about the initiatives of the judiciary:

- **Educational Videos on YouTube.** Several courts, such as the Indiana Supreme Court, New Jersey Supreme Court, and the U.S. Federal Courts, share videos on YouTube to educate and inform the public about the courts and how they operate. Each channel has received thousands of views. Indiana's videos have been viewed more than 150,000 times, proving there is public interest in the information.
- **Public Resources on Facebook.** Fulton County Superior Court in Georgia and Maricopa County Superior Court in Arizona use Facebook to promote free legal clinics and classes and show what to expect in jury duty. Facebook offers a great way to provide useful resources for the public to better understand and interact with the court system.
- **High-Profile Cases on Twitter.** Tennessee courts use Twitter to post last-minute filings during looming executions. This has proved a valuable way to get information to the public and the media quickly and efficiently. The Florida Supreme Court has also had recent success using Twitter to

Putting rules in place about who is a journalist will help both the courts and the media understand who is allowed to cover a proceeding.

distribute docket information for a high-profile case involving federal stimulus money. Thanks to Twitter, the public information officer was able to quickly let the press and public know when oral arguments were scheduled with less than 24 hours notice.

These are just a few examples of how the courts are leveraging social media to their benefit. Strategic use of social media *can* be beneficial to the courts.

Where Does that Leave Us?

What action should the courts take? Here are a few things courts should consider in the wake of this changing landscape.

1. **Update media coverage rules to include smart phones.** Courts should consider proper rules to govern the media's use of social media in the courtroom. The New Hampshire Supreme Court amended their media rule to include provisions about smart phones. In their rule, electronic devices are permitted in the courtroom, provided they remain on "silent mode." The Arkansas Supreme Court, on the other hand, prohibits the use of electronic devices completely to prevent the use of e-mail or social media during proceedings. A number of courts across the country do not have guidelines, leaving the media to guess what is considered appropriate. No matter which way the courts decide to go, developing proper rules will help both the courts and the media understand what constitutes acceptable smart-phone use in court.
2. **Consider using social media as a mouthpiece.** As demonstrated earlier, a number of courts have used social media to enhance public-outreach efforts. Courts should examine possible ways to implement social media to assist with the ongoing need to educate and inform the public.
3. **Set guidelines for professional journalists.** Defining who is a journalist is

no easy task. However, putting rules in place about who is a journalist will help both the courts and the media understand who is allowed to cover a proceeding. This also ensures that coverage is granted fairly and equally.

4. **Monitor the conversation for errors.** Even if courts do not actively participate in social media, it is helpful to monitor what is being said about the courts on social platforms. Paying attention to what reporters and the public are saying may help PIOs consider new ways to communicate information to help prevent inaccuracies and better inform the public. It also allows PIOs and court staff to consider when, and if, a response is needed to correct errors. Being aware of what is being said about the courts is an important task to help preserve the integrity of information that is being shared about the courts.

Courts are notoriously slow to adapt to change, but it is imperative to understand the growing phenomenon of social media and how it affects the coverage of the courts. Recognizing the changing landscape of the media is critical to remaining relevant and accessible to the media and public in this new environment.

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ALL-A-TWITTER: HARNESSING NEW MEDIA FOR JUDICIAL OUTREACH AND COMMUNICATION

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New-media tools need not be a threat to the integrity of the judiciary if they are employed with a clear set of objections and an understanding of potential misuse. Social media allow courts to directly reach out to communities, share success stories, and respond to constituent needs.

As an act of survival, the Clark County Courts Public Information Office (PIO) in Las Vegas, Nevada turned to using Twitter following the September 16, 2007 arrest of O.J. Simpson. This micro-blogging tool, which sends out messages in 140-character “tweets,” was the fastest way to broadcast simple answers to the more than 100 journalists, photographers, and television producers who descended on the courthouse following the robbery at a Las Vegas hotel-casino by Simpson and his crew. Adoption of the new-media tool was considered an extension of the LVCourtsblog.com, a Wordpress blogging solution implemented in 2003 when the information technology department indicated the current Web site software was unable to send out an RSS feed, a syndication tool that allows individuals to read news as it is published. The blog-generated news feed became a useful way to disseminate information to journalists, alerting them of press releases, program changes, and court orders. The LVCourts Blog developed into an invaluable online judicial newsroom.

Yet with the arrest of Simpson, the blog no longer could be relied upon to send out messages as quickly as the media demanded. The PIO required a computer to update the blog, and with all of media camped around the courthouse and their endless questions, finding one became a near-impossible task. In the cycle of instant news, the media wanted any tidbit of information they could share about the Simpson case with viewers, Web site readers, and listeners (Twitter, 2008). Journalists also wanted information quickly. The office phone, the cell phone, and the main switchboard were overwhelmed with calls. Media converged for

When discussing the merits of social media, court administrators and judges cite fear of losing control of the message; bias; undue influence; and misuse as the main reasons for avoiding its use.

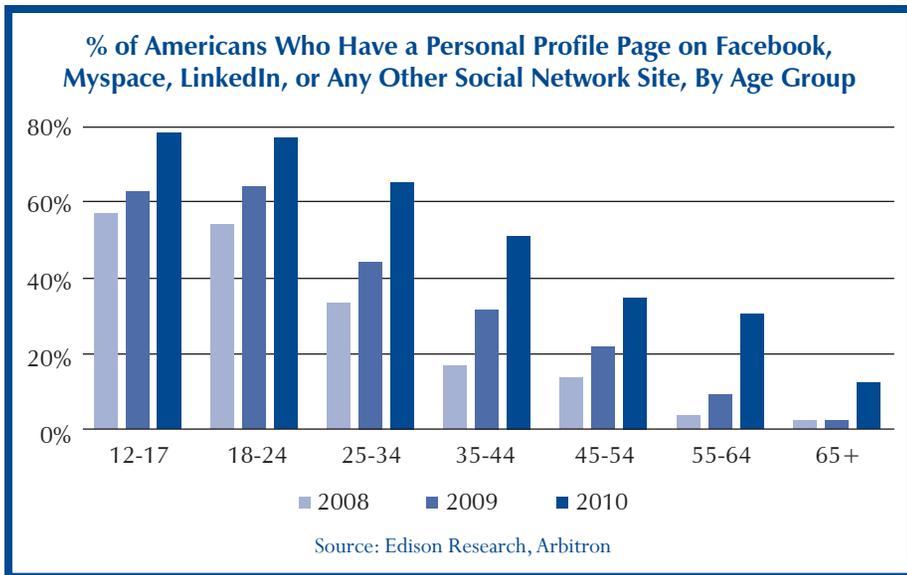
impromptu briefings on the courthouse steps. Judges and court staff were stopped and asked questions about specifics of the case or their opinions on the arrest. A way to restore calm was needed.

Gaining Control Tweet by Tweet

Twitter, which began in 2006 as an experiment in instant messaging, quickly became another arrow in the communication quiver (Sagolla, 2009: 5). The online-messaging tool broadcasts short messages to everyone at once and can be monitored by journalists in the newsroom. Using a cell phone, the PIO was able to communicate immediately to anyone who subscribed to the feed. Word quickly spread that the court was using Twitter, and hundreds of people started following the feed. For a moment, the media calls stopped.

It would be simplistic to suggest that the Clark County Courts’ use of micro-blogging, blogs, social media, and other new media tools changed the paradigm for how the courts communicated with media and customers. In truth, the courts had been developing strategies for reaching audiences since the creation of the PIO in 2001. The use of new-media tools to extend the courts’ reach to various audiences was considered a core element of the courts’ communication plan. The courts’ Web site was redesigned to focus on communication of court programs, news, and outreach. The blog was developed as the central repository of court news, press releases, biographies, photos, and other media-centric material. E-mail lists were created, allowing individuals to subscribe to online newsletters about various court programs and initiatives.

All of these were an extension of an initiative established in 2003 by then Chief Judge Kathy A. Hardcastle and former Court Administrator Charles J. Short to make the Clark County Courts into a virtual courthouse. Users could obtain court



services and programs from any location in the world (Short, 2005). Access to justice would be offered to the tourist from Australia who wanted to pay a traffic ticket online, as well as to an attorney in Las Vegas who wanted to file a civil pleading electronically from the office. Providing access to information to extend transparency and build trust was considered as important by the courts as providing access to justice.

Leading the Way When Others Will Not

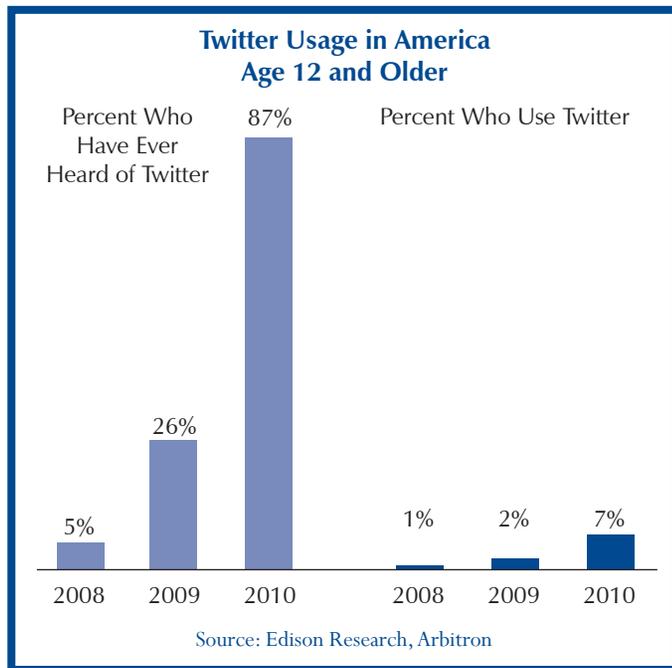
By 2005, the Las Vegas court system was ahead of the curve in providing information online, along with electronic access to court programs. The court became only one of a handful of courts using new-media tools to communicate with others. A 2010 survey by the Conference of Court Public Information Officers, in cooperation with the National Center for State Courts and the E.W. Scripps School of Journalism at Ohio University, determined that the number of courts using social media, blogging, and other forms of new-media technology was relatively few (Conference of Court Public Information Officers, 2010: 68). Only 7 percent of survey respondents indicated they used some form of these tools and, even then, many were not actively pursuing new-media tools.

When discussing the merits of social media, court administrators and judges cite fear of losing control of the message; bias; undue influence; and misuse as the main reasons for avoiding its use (Sinrod, 2009). The possibility that jurors would post messages about verdicts, only moments after they were announced in court, also has had a chilling effect (Marks, 2009). The possibility of a blogger or user of social media adversely influencing a court or a case sends alarms throughout the courthouse and chills down the spines of court officials and judges. Recent judicial ethics committees and commissions in Ohio, New York, Florida, and North Carolina recognized the potential for defendants to “friend” and potentially influence judges by establishing an online relationship leads to questions about ethical behavior and whether the potential for transparency and openness fails to justify the risk (Schwartz, 2009).

The Reality of Social Media

The reality is that people visiting the courthouse frequently use social media (Browning, 2010). Individuals routinely post observations about their jury duty and other court experiences on social-media channels, such as Facebook, Tumblr, and Twitter. The courthouse is a dynamic canvas where human stories unfold. At some point in their lives, almost everyone will find themselves at a courthouse, whether for jury duty, a traffic ticket, or something much more. Individuals come into a court angry, sad, frustrated, or confused. They do their duty. They plead their cases and learn their fates. Some accept it and are repentant. Others, not so much. It is a place full of emotions that people want to share. The drama of the courthouse traditionally made the front page of the newspaper or the evening news. Unfortunately, declining readership, and a shift to focus on celebrity or notorious crimes, has reduced courthouse coverage by local and national media (Ratcliff, 2008). Now any emotion from a court hearing likely will be found on Twitter.

The use of new media has increased nearly as quickly as traditional media has declined (Pew Research Center, 2011). The number of bloggers and citizen journalists has also expanded as special-interest and niche groups dominate the news cycle (Vocus Research, 2011). One of the largest new-media news portals, *The Huffington Post*, obtains much of its content from contributors who post articles without compensation (Linkins, 2011). Audience is determined by the amount of interest a story generates. The notion that comrades and friends tend to share



news with each other clearly is the driving force behind social networking and new media. Courts are finding that these special niche groups, from lawyers to court observers, frequently access social media to obtain news, information, and gossip about court cases and the legal community. This

phenomenon allows courts to tap into the news stream, delivering content directly to the public, and to monitor conversations about courts, judges, and judicial programs (Plummer, 2010).

A Shifted Paradigm Opens New Doors

This paradigm shift has changed the way court PIOs obtain coverage for important court initiatives. At one time, the court PIO could rely on issuing a press release and finding coverage about a court program in the morning newspaper. Those days are gone, and courts now must look to other communication channels to generate awareness of projects and initiatives (Sellers, 2008). Information can be communicated immediately to many people with diverse backgrounds and interests through new-media tools. Plus, these communication channels provide courts with an inexpensive way to create awareness. A Facebook page, Twitter feed, blog, video, or podcast can give courts the ability to bypass the traditional media gatekeepers of

newspapers and television and reach out directly to the groups willing to follow a court's communications. When used in conjunction with a communication strategy, new-media tools, such as Twitter, Facebook, YouTube, and others, can be effective in a court's outreach efforts. New media can engage customers, encourage advocacy, generate dialogue, and develop positive relationships (Harman, 2010). The key is to develop a plan of action that anticipates misuse and bad behavior and strategies for addressing such problems in advance.

CASA Flourishes Because of Social Media

In Clark County, where Las Vegas is located, the Court Appointed Special Advocates (CASA) program has provided advocates for children in the juvenile justice system for the past 30 years. Former Juvenile Judge John Mendoza coined the acronym CASA, a Spanish word for home, as a way to help the public better understand the efforts of the court's guardian ad litem program. The term was soon adopted nationwide (Mendoza, 2010). The program relies almost entirely on public outreach and court-generated publicity to recruit new volunteers and solicit contributions to the Las Vegas CASA Foundation. With no budget for advertising or marketing, the program turned to new-media tools in 2009 to generate awareness and attract new volunteers.

A communication-and-outreach plan was developed to help the program expand its message to new audiences and help current CASAs spread the word about the program. While traditional media still can be relied upon to cover adoption events, the basic task of recruitment and training fell to new-media tools. Facebook has become a primary medium for friends of CASA to share their stories, announce successes, congratulate new CASA graduates, and provide general information. Creating a two-way communication with fans and followers and making them feel like they are a part of something is essential to building a successful strategy (Emarketer, 2010). Not all courts are comfortable with the two-way conversations inherent in social media. Concerns about privacy and ethics stand out as key considerations. Some courts doubt new media tools are useful or effective in reaching key constituents (Conference of Court Public Information Officers, 2010: 25).

While managing the dissemination of information through new media requires commitment and time, the results often outshine the return on investment from traditional marketing and advertising.

Obstacles to Implementing a CASA Plan

Concerns about privacy, ethics, and opening up the court to criticism were obstacles that required attention as the Clark County CASA program proceeded to develop a Facebook page (Conference of Court Public Information Officers, 2010: 39). The program ultimately proceeded with a Facebook plan that included rules to limit inappropriate disclosure of private information and clear direction for sharing successes and stories. To expand exposure for the program, CASA began broadcasting on Twitter to direct visitors back to the CASA Facebook page. The program allowed CASA to build trust through transparency by responding directly to constituent questions. The Facebook page allows the program to share news, post photos and videos, announce upcoming events, and recognize volunteers. A key advantage is the ability to track interactions and measure the return on investment of time and energy devoted to building and maintaining the page (Paine, 2011).

Measuring Success

The successful engagement of audiences directly through new media can be measured by reviewing the types of conversations and the spread of information to multiple social-media channels (Turner, 2010). While managing the dissemination of information through new media requires commitment and time, the results often outshine the return on investment from traditional marketing and advertising. Court programs that devote a few hours each week to posting content to Facebook or YouTube reap substantial rewards through increased advocacy and support and the spread of information by word of mouth (Brogan, 2009).

After implementing a Facebook page, the Clark County Courts CASA program experienced an increase in the number of new volunteers while improving the retention of volunteers. Active use of the page among its Facebook fans

demonstrates strong support for the program. Further insights show the page is most frequently visited by women 35 to 44 years of age who frequently express that they “Like” a particular post. The fans of the program react strongly to the program’s mission to provide a voice for children, and they share this view with others. Fans frequently leave comments, especially on messages about new graduates or success stories about child advocacy. These responses provide a clear voice of support that extends out into the community. Word of program successes now spreads from Facebook to the traditional media, resulting in increased media exposure. All of these outcomes can be measured through the monitoring of increased dialogue, advocacy, and support of the CASA program, further justifying the program’s use of new media as a communication channel (Paine, 2011).

Tools for Measuring Success . . .

No single tool currently exists that can capture and measure all aspects of social media and provide a clear snapshot of results about a particular set of social-media channels. This is a clear challenge for courts wanting demonstrable evidence to justify the use of social media for public outreach. Many individual tools promise to provide a clear review of social media, but few completely provide results. A number of commercial and free tools are available to monitor social media and examine metric results, including SocialSeek, Google Trends, Radian6, SM2, and Cymfony. These tools each gauge the success of social-media outreach in different ways, from measuring the influence of a message to counting the number of times a message was shared. In the end, the measurement of success of a particular social-media campaign depends on the goals and expected outcomes (Paine, 2011).

. . . or Just Success

New-media communication channels need not be a threat to the integrity of the judiciary if they are used with a clear set of objectives and an understanding of their potential use and misuse. A communications plan, examining the use of new-media tools by employees, court programs, and other users, should be written and followed to ensure control over court messages and outcomes (Arizona Judicial Branch, 2010: 8). With more than 500 million users registered on Facebook, a population exceeding that of the United States, new media no longer can be considered a fad to be ignored (Facebook, 2011). Individuals will turn to new media to find information on topics that interest them. The courts and the cases

that flow through them will remain among those topics as long as the judiciary remains a bellwether of the community. The successful use of new-media tools by the Clark County Courts demonstrates the place that new media has in the conversation. Ignoring the spread of these tools will not make them disappear or diminish their impact in society. By developing strategies now to better use new media, the judiciary not only will be prepared for its growing influence, but will benefit.

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IMPROVING COURT ACCESS: SPECIALIZED COURTS AND SERVICES

“Keeping our justice system strong still means making the wisest and best use of the resources we are given. It still means regularly examining what we do, and how we do it, with cost in mind.”

Chief Justice Walter L. Carpeneti of Alaska, State of the Judiciary 2011

THE QUIET BATTLE FOR PROBLEM-SOLVING COURTS

Gordon M. Griller

Director, Trial Court Leadership Programs, Institute for Court Management, National Center for State Courts

Many trial courts will face heightened scrutiny from public-funding bodies regarding problem-solving courts. Numerous studies support the cost-effectiveness of such courts, but some court watchers see a struggle looming on the horizon.

The Vulnerability of Problem-Solving Courts

Specialty courts, focused on medical and diagnostic approaches to processing cases involving addictions and other community problems, are often more vulnerable to funding cuts due to their higher evaluation and treatment expenses compared to traditional adjudication. Yet most research indicates they reduce substance abuse, recidivism, jail overcrowding, crime, and victimization more than conventional adversarial approaches.

In the politics of budgeting, however, research and mountains of data on potential cost savings often mean little to those wielding a budget ax. Hard-dollar cost-per-case figures are beginning to trump soft-dollar crime-reduction benefits. Despite the long-term cost-effectiveness of these courts, there is no getting around the fact that they are expensive in relation to the number of offenders treated.

How should court leaders respond? Will the urgent need to preserve adversarial, core adjudication methods weaken the impact and momentum of problem-solving courts? If so, is it a temporary or long-term setback? Can continued federal government grant support for problem-solving courts sustain momentum, or is it too little too late?¹

Answers to these questions and others are being debated by legislative committees funding courts and judicial governing councils developing court budgets. Tough financial times could either stall or set back the diagnostic court movement.

Many Trial Courts Are “Going Back to Basics”

Absent any structural budget increases, the rate of economic growth for the country most likely will never return to what it was between 1990 and 2010. And court and state budgets are certain to face additional strains due to an aging population, declining number of workers, and increasing entitlement costs (Medicare/Medicaid/Social Security), all prompting deeper cuts in discretionary programs.

State budget shortfalls are scary. In January 2011, the Center on Budget Policies and Priorities identified 40 states with projected FY2011/12 budget gaps totaling \$140 billion. Experts contend that figure will likely grow by the start of the current fiscal year on July 1 since revenues usually fall short of projections. Local budgets are down 10 to 20 percent as city and county programs experience reduced tax revenue, state-aid cuts, and employee layoffs (National League of Cities, National Association of Counties, and U.S. Conference of Mayors, 2010). Many state and local courts have taken cuts of 15 to 20 percent since FY2009.

The length and severity of this recession have caused more court leaders to move from short-term responses to more strategic initiatives, directed at remaking basic operations and reexamining overall services. Some courts have researched constitutions, statutes, rules, case law, and administrative orders to identify mandated and nonmandated court functions. Others have followed private-sector approaches that promote business longevity in good times and bad, most notably visions and missions that encourage leaders to remain true to a set of core values and to stop performing functions inconsistent with them. All such approaches narrow programs and services in ways historically and fundamentally supported by the basic purposes of a trial court.

In critically reassessing business practices and services, court policymakers are being encouraged to think seriously about what to stop doing, do less of, do new, do differently, or get someone else to do. Part of the underlying message is not to stray too far from traditional court mandates, many centered on adversarial adjudication, precedent, and limited definitions of due process. As a result, problem-solving courts can find themselves in greater budget jeopardy as court management and performance-based budgeting stress long-established, mandated programs tied to core values.

Trial Court Budget Responses

Tactical

Hiring freezes
 Across-the-board cuts
 Travel; education reduction
 Raise fees; surcharges
 Lay-off staff; hire temps
 Delay salary increases
 Improve collections
 Scale back purchases
 Reduce hours
 Salary give backs
 Temporary furloughs

Strategic

Consolidate back-office services
 Merge divisions; departments
 Flatten organization structures
 Force use of online services
 Outsource; homesource functions
 Cross-train; liberalize work rules
 Increase technology
 Eliminate non-core functions
 Reengineer business processes
 Create new revenue flows
 Partner with other agencies

Source: John Hudzik, Michigan State University

Is Evidence-Based Probation an Option?

Another potential weakening of the problem-solving court movement may be more cost-efficient approaches from new evidence-based probation (EBP) initiatives. The EBP movement began over 15-20 years ago, about the same time problem-solving courts gained a foothold in trial courts. It is founded on similar principles and methods: research-proven approaches for changing behavior in specific offender populations. Just as problem-solving courts and associated social services address anti-social thinking, push positive reinforcement, reduce recidivism, promote public safety, decrease victimization, and stimulate behavior change, so do evidence-based probation programs. Similarly, violations in expected behavior meet with swift and certain sanctions (i.e., short jail terms), often triggered directly by probation officers. National Institute of Corrections (NIC) and American Probation and Parole Association (APPA) officials are training community correction and probation departments in this new methodology.

Adding impetus to the EBP movement is the prevalence for problem-solving courts to function more as an organizational extension of probation than a part of the court. In these settings, the judge frequently acts like a super-level probation

officer rather than an independent judicial officer. In such situations, critics have questioned why court leaders do not just move to a cleaner, more streamlined EBP model and redirect judge time to other things.

Muddying the waters further for problem-solving courts are new efforts inside court systems encouraging judges to embrace evidence-based sentencing. The Conference of Chief Justices, Conference of State Court Administrators, and National Center for State Courts recently launched a nationwide sentencing reform project, “Getting Smarter About Sentencing,” to encourage the adoption of parallel evidence-based sentencing protocols for judicial officers (Warren, 2006). Although not in competition with problem-solving tribunals, some NIC and APPA advocates feel evidence-based probation and sentencing costs can be less per client and outcomes as good as or better than some problem-solving courts dealing with the same offender populations.

In support of their position, most studies about the role a judge plays in problem-solving courts show varied results. For example, the Sentencing Project reported that although intense judicial involvement with high-risk offenders produced better outcomes than with lower-risk participants, to maximize effective outcomes court staff must craft individual responses of graduated sanctions based on each client’s personal drug abuse and criminal history. For low-risk offenders, the number of times a judge was involved with a defendant had no measurable impact on outcomes (King and Pasquarella, 2009). These conclusions call into question the intensity of judicial participation practiced in some problem-solving courts and feed the contention that EBP, without large-scale judge involvement, may work as well and be less costly.

All Politics Is Local

A factor strengthening problem-solving courts is scattered evidence that where advocates are closely allied with funders the courts fare better. Many court watchers feel there is a greater chance of such a situation locally, where county-board and city-council term limits are frequently absent, leadership judges tend to be on a first-name basis with elected officials, and outcomes from problem-solving courts are more visible to local funders. Ubiquitous lobbying for diagnostic courts at city and county levels is also touted by many seasoned trial court professionals as easier.

“So we’ve had to cut back on important programs to keep the doors open to do the work the constitution requires us to do.

“Let me give you one example, our DWI and Drug and other problem-solving courts. They go beyond traditional court functions of applying the law and deciding guilt and punishment. These courts actually work on changing behavior that’s dangerous to the people who engage in it, behavior that’s dangerous to all of us and our families. . .

“We want to keep these programs working, even though the constitution doesn’t say we have to run them. But to keep our doors open to do the things the constitution does say we have to do, we’ve had to cut back on problem-solving courts, we’ve cut needed personnel, we’ve reduced numbers of people helped, and in some cases we’ve even had to eliminate whole programs.”

- Chief Justice Charles W. Daniels, New Mexico Supreme Court, 2011

For example, the Seattle Municipal Court has maintained community, domestic violence, and mental health/homeless courts at pre-recessionary levels despite substantial budget cuts throughout city government and a recent reduction in judicial positions. The court routinely presents data to show how lives are rehabilitated, jail costs curtailed, and downtown neighborhoods improved. Other justice system stakeholders, including prosecutors, public defenders, and the Seattle Police Department, help support the court’s specialty programs. Outside consultants have done cost-effectiveness studies, and when specialty court funding looks to be in trouble, the court appears before the council to showcase program value.

Other state-funded problem-solving courts may have a tougher road, whether decisions are made by the judicial branch or before state legislative committees. Specialty-court understanding and sensitivity among state-level policymakers can pale at a distance; legislators could be too busy to notice impacts in their districts; and local trial judges too disconnected, reluctant, or unwelcome at the statehouse to help with lobbying. Even when positive cost-benefit data is presented, the urgency to continue or expand statewide funding for local problem-solving courts can be lost amid larger, more pressing budget problems.

The evidence, however, remains mixed. Dr. Roger Hartley, a noted court budget expert at Western Carolina University, is exploring state-funded drug courts. His data indicate that state-funded drug courts once developed tend to be more institutionalized. One possible reason, he posits, is there may be a more organized set of drug court advocates in states that secure state funds versus those that do not. They also may be better able to mobilize political support to sustain those courts. Whether these early conclusions apply to other types of problem-solving courts has not been substantiated.

Florida, the first state to create a drug court in 1989, supports those specialty courts today through state and local funding. The four drug courts at the Thirteenth Judicial Circuit Court in Hillsborough County (Tampa) offer a glimpse of how it works. Depending on the type of drug court, treatment and rehabilitation dollars flow primarily from three separate state departments—adult corrections, children and family services, and juvenile justice. Those funds in recent years have been cut back, representing the biggest current threat to drug court viability. On the other hand, county officials, encouraged by trial court leaders, have held steady their local budget for court evaluators, case managers, and a portion of the treatment expenses. Admittedly, the size of the county’s contribution is much smaller than the state’s portion in Florida’s new, state-funded court system. However, it is telling that county government is not required to contribute to drug courts, but their policymakers see the benefits in reduced jail overcrowding and less drug-induced crime.

Sparks Municipal Court (Nevada) and the Fifth Judicial District Court in Polk County, Iowa (Greater Des Moines) are examples of subtle budget pressures within

“How can I use half of the money when I’ve got double or triple the need for it? Should I say only second DWI offenders are eligible? Do I say only 18 to 25 year olds will be eligible? Or, do I just close the program down and give the money back to the Supreme Court?”

- Presiding Judge Barbara McCarthy, Sparks Municipal Court, Nevada

the judicial branch that are eroding problem-solving courts. Court leaders in both jurisdictions support specialty-court philosophies and their positive impacts, but each faces the realities of reduced internal-branch funding and limited choices that have resulted in cutbacks.

Municipal courts in Nevada are funded primarily by cities. The state judicial branch, however, provides money for specific court programs that branch policymakers conclude are important. The Sparks Alcohol Abuse Court is one of those programs. Money for the program comes from a legislatively authorized state assessment (\$7.00) on every misdemeanor conviction, including traffic charges. That assessment is distributed by the administrative office of the courts as reoccurring grants to trial courts. As case filings have dropped in Nevada and nationwide (a phenomenon frequently linked to the recession), assessments have diminished. With no state-level supplementary funds available, municipal court presiding judges must determine how to cut their programs and still comply with the “Ten Key Components” of a drug court—a prerequisite for receiving state drug court monies (Bureau of Justice Assistance, 2004). Sparks Municipal Court officials, like many others, are questioning the efficacy of continuing their alcohol-abuse court with 50 percent less money.

It should be noted that the Sparks program is quite limited even when fully funded. Municipal courts in Nevada do not have social service or probation officers to staff the cases. In Sparks, only the alcohol-and-abuse-court judge, an assistant city

attorney, a contract public defender, a court marshal, and the judge’s executive assistant work the cases.

The Iowa courts are state funded. Polk County is the state’s busiest trial court and operates separate drug courts for adults, teens, and families. Social services for these specialty courts are supported through executive-branch budgets for community corrections (adult) and human services (juvenile) and a reoccurring federal grant for family drug court. Polk County court leaders also support special-purpose courts. They understand their benefits in improving lives and curtailing addictive behavior, but the court itself realizes no direct financial assistance or workload support from the county, state, or federal government for these programs. Here again, the recession and likelihood of more budget cuts further complicates a well-intended court strapped with too few court staff and not enough judges to deal with conventional adjudication demands. To that end, court leaders recently were forced to say “no” to a federal grant to fund treatment staff for a special juvenile mental health court.

Can Business Process Reengineering Help Save Specialty Courts?

As courts nationwide come face-to-face with the realities of long-term budget reductions, many have begun to reengineer their operations in pivotal ways. Could those processes slow the attrition of specialty courts?

The National Association of Drug Court Professionals’ chief of science and policy, Douglas B. Marlowe (2010), addresses that very question in a comprehensive report when he cautions that to drop or reduce the makeup or intensity of key drug court protocols will curb the overall success of programs. Such is likely the case with other problem-solving tribunals that embrace intensive treatment regimens.

So, it appears there is little room for reengineering without reducing program efficacy along with proven cost-effective benefits. To do so damages the very reasons problem-solving courts were initially instituted. Unfortunately, many courts have no choice as they confront leaner funding and more demand for judges to refocus their time and energies on traditional adjudication.

Key Drug Court Protocols

Multidisciplinary Teams involving the judge and other justice system players;

Judicial Status Hearings repeatedly with the offender present during the first few months and less frequently as participants achieve sobriety;

Drug Testing on a frequent, random basis during the first several months and less frequently later in the program;

Graduated Sanctions and Rewards with swift punishment for infractions (brief jail detention) coupled with incentives for good performance; and

Substance Abuse Treatment conforming to standardized, evidence-based regimens.

At the End of the Day, Politics Wins

We are back where we started. There is no denying public budgets are intrinsically political, reflecting what government will or will not do. They set priorities and display the relative power of decision makers and special-interest advocates. And those choices in the world of courts are seldom based on substantiated research, potential cost savings, or soft-dollar crime-reduction benefits.

The future for problem-solving courts may be rockier than in the past. The realities of the recession will likely shrink the presence of diagnostic adjudication approaches. Where specialty courts remain, some will become much less effective. Where they disappear, they will be hard to restart until budget times are better. Where court leaders are able to maintain and strengthen problem-solving courts, much will depend on their political influence with funders.

Some helpful techniques to garner support include:

- **Maintain continuous and strong stakeholder support** (e.g., justice system agencies, treatment advocates, and participants). Political capital

is hard to come by for court leaders even in good times. The problem, all too frequently, is that courts are not “sexy” in the eyes of the public. They have few allies and fewer advocates in budgeting. Elected officials do not get much credit for funding courts. Specialized courts connect the judiciary to a host of allies, some with important political constituencies that can be helpful. Losing these networks may make courts more of an afterthought in the budget process.

- **Leverage community and business backing to champion positive outcomes** (e.g., reduction in crime and safer neighborhoods). Business and community leaders are powerful influences on politicians. Problem-solving court advocates who establish clear linkages between crime reduction, business district improvements, and increased private-sector revenues can garner powerful advocates when the going gets tough at budget time. The first quality-of-life court in the United States—the Midtown Community Court in New York City—is a prime example of how public/private collaboration can revitalize a business district (Times Square) by diminishing prostitution, illegal vending, graffiti, shoplifting, fare-beating, and vandalism.
- **Develop an economic triage approach balancing different intervention models and their costs against evidence-based outcome data** (e.g., judicial-centered versus probation-centered programs). Here we are talking about allocating limited resources among problem-solving courts and EBP to maximize the efficiency of both and decrease the overall cost-per-case. Although this article discusses problem-solving courts and evidence-based probation/sentencing as separate topics, both have similar goals and can be blended to elevate their effectiveness and economy.
- **Advocate in compelling ways from a macroeconomics perspective** (e.g., reduced recidivism, cost avoidances, and rehabilitation results). Some problem-solving courts may not be well anchored in a court’s culture or budget. In these situations, such specialty courts are frequently described as pilot projects that are not central to the administration of justice. However, other states and localities have incorporated them into the mainstream. In states like Missouri and New York, there are legislative line items for specialized courts or statutes that mandate them. The majority of state and local governments, unfortunately, have not reached that level.

For them, the current budget-cutting frenzy likely means a steeper uphill slog for diagnostic/therapeutic adjudication advocates in persuading budget policymakers to cut elsewhere.

In the final assessment, courts have a good story to tell. But they bear the burden of getting the message out in tough economic times, especially to program funders predisposed to cut budgets. This poses a real leadership challenge for judges, administrators, and specialty court advocates—one which the pioneers of the drug court movement embraced and moved forward against many odds. Arguably, the real question is whether today’s court leaders can carry this message and provide the necessary persuasive rationale and political skill to stir cost-conscious funders to support and sustain problem-solving courts.

ENDNOTES

¹ Although many problem-solving courts, especially drug courts, have their genesis through federal grants, those monies are commonly structured as start-up costs to be eventually replaced by state and local funding after a few years.

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STRENGTHENING RURAL COURTS: CHALLENGES AND PROGRESS

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Rural courts face unique challenges posed by their locations in sparsely populated areas, often with limited resources for themselves and for court users. In many places, however, the challenges are being overcome through effective use of modern technology and support from state administrative offices of courts.

Challenges Facing Rural Courts

Most of the documented innovation and experimentation aimed at court system improvement during the past 30 years has taken place in urban settings or in relatively populous suburban counties. However, the programs and methods developed for large courts are sometimes inappropriate for rural jurisdictions. Large geographic distances, sparse populations, small staff sizes in courts and justice agencies, and limited resources (including legal, social, and health services) constitute a core set of challenges for rural courts. These are magnified by lack of specialization among justice system practitioners and service providers, professional isolation of practitioners, and the often close interrelationships between community members and justice system personnel.

Seminars with rural court judges and court managers conducted by the Justice Management Institute have identified six key areas of need for rural courts:

1. *Enhanced technology*, including hardware, software, and information and communications infrastructure and technical support;

Rural Courts Improvement Network

The Rural Courts Improvement Network is an initiative of the Justice Management Institute (JMI) and the Bureau of Justice Assistance (BJA), U.S. Department of Justice that began in early 2008. The goal of the initiative is to strengthen the ability of state court systems and rural court leaders to improve court operations in rural areas by emphasizing the sharing of information and ideas about promising approaches and practices, and fostering peer-to-peer learning among court system leaders at the state and local levels.

2. *Improved procedures and practices to assist self-represented litigants*, including effective use of technology, easily understandable forms and instructions, and training for court staff on providing information and appropriate assistance;
3. *Overcoming language barriers*, including improved court interpreter services and creative uses of technology to allow for greater access to qualified interpreters;
4. *Greater availability of substance-abuse and mental-health treatment services*, including more ways to provide access to these services by dispersed populations who often face transportation barriers;
5. *Modernization of antiquated court facilities*, including upgrades to enable adequate security and use of modern information technology; and
6. *Upgrading of indigent defense services*, including development of performance standards, mechanisms for supervising appointed attorneys, and adequate levels of compensation and support for public defenders and assigned counsel.

Since 2008, a federally funded initiative to strengthen rural courts has brought together judges and court managers from over 30 states in a series of seminars to discuss challenges and exchange information and ideas about how to address those challenges effectively.¹ Practitioners in these seminars have identified a number of innovative and promising approaches to the challenges facing rural courts, often utilizing imaginative applications of modern information and communications technology. Examples of such approaches are outlined in this article.

Harnessing Modern Technology

The dominant trend in addressing the challenges faced by rural courts has been the ever-increasing utilization of modern information and communications technology. The trend began in the 1990s and accelerated during the first decade of the 21st century.

Courts in many states, including Nebraska, Utah, Minnesota, and Wisconsin, now rely on *videoconferencing* to reduce the costs of inmate transport, judicial travel, and attorney travel. In some Utah judicial districts, an Internet-based videoconference system has been set up in jails for defendants to “appear” at various pretrial hearings. Judges, clerks, prosecutors, and defense counsel can access the system remotely from their chambers, offices, or other locations. Split screens enable participants in the hearing to see and interact with one another. In Wisconsin, the videoconference proceedings take place on the record in a courtroom with a 42-inch screen for the public to see the defendant. Cameras must be able to “pan” the courtroom so that the defendant can see people at the hearing.

Several states use Web-based distance education to ensure that court personnel across the state receive standard, consistent training in core subject areas while reducing dramatically the costs associated with travel to traditional classroom courses. In Missouri, for example, the state court administrator’s office implemented an expansive training model incorporating Web-based training. In 2009 roughly 60 percent of court-related training in Missouri was offered online through Webinars and Web-based courses. The Nebraska Judicial Branch also offers Web-based distance learning.

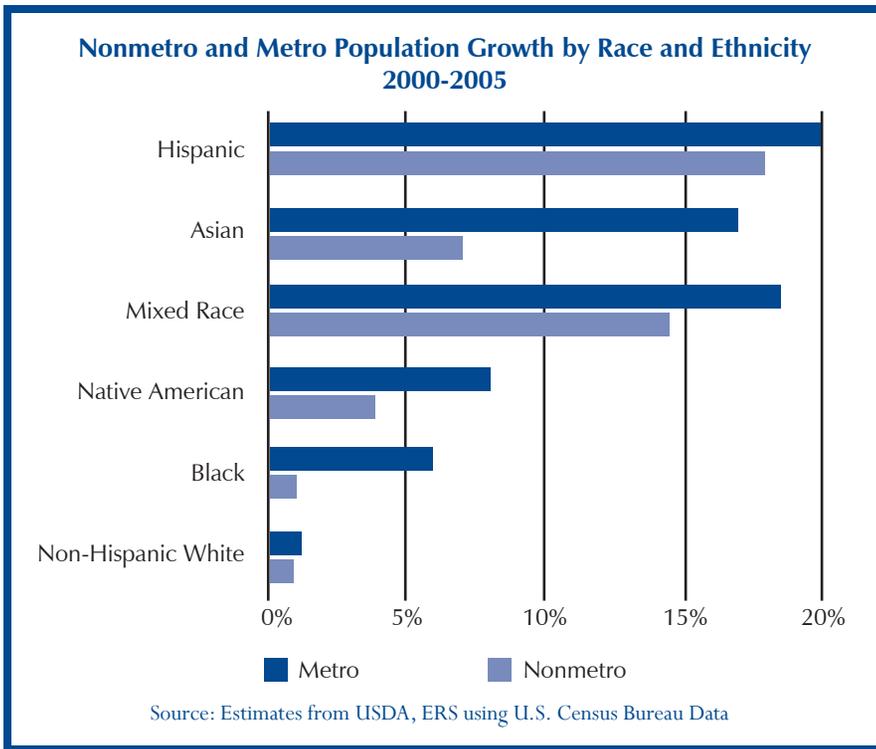
Technology makes it easier for both individuals and court personnel in rural areas to accomplish certain routine activities. For example, residents in Nebraska and in Clayton County, Georgia, can pay their traffic tickets online. Court personnel in the 10th Judicial District of Nebraska rely on a district-wide, online shared calendar to set dates for trials and other court hearings. Linked computers and call forwarding in Nebraska also allow clerk magistrates in “one-person” courts to cover for one another when the courts are closed or they are out of the office for any reason. This technology enables residents to access court services even when the courts are not physically staffed.

Enhancing Access to Justice for Self-Represented Litigants

State court administrators’ offices in some states have made considerable progress toward improving access to justice for rural residents, including those who choose to represent themselves in court proceedings. These efforts tend to involve technological approaches. Web-based resources provide general information about the court system, various forms for certain types of cases, status and docket information, and specific guidance for pro se litigants.

Courts in Idaho and Alaska operate self-help centers through Web sites. In Clayton County, Georgia, the superior court and the state court administrators’ office partnered with the Clayton County Public Library System to place specially programmed computers in libraries throughout the county. In the western part of upstate New York, the courts, in cooperation with Legal Assistance of Western New York, turned to a low-cost software package described as “Turbo Tax for legal papers.” A2J Author® provides templates and instructions for common forms that can easily be customized by court staff and nontechnical authors to meet local needs. Litigants who use A2J complete the forms with guidance from simple, straightforward text and voice instruction, learning about the law and their rights as they go along. In New York, the system is widely used for small estates, landlord and tenant matters, custody/visitation, name-change petitions, child support modifications, and family offenses (with assistance from domestic-violence-service providers).² Court leaders in Wisconsin are pilot testing a software program to assist self-represented litigants in rural areas by providing a user-friendly Web portal that will host a pool of pro bono attorneys who can answer their questions.

Linked computers and call forwarding allow clerk magistrates in “one-person” courts to cover for one another when the courts are closed or they are out of the office for any reason. This technology enables residents to access court services even when the courts are not physically staffed.



Technology is not always the only—or even the best—solution for access issues. Rural courts continue to explore and implement nontechnological approaches to providing access to the courts, sometimes to complement or supplement the technology. Personal assistance, through court staff, a nonprofit organization providing assistance, or pro bono services of bar members, can be critically important alternatives or supplements to Web-based tools.³ For example, in addition to its Internet-based Family Law Self-Help Center, Alaska offers a “Helpline” service through a toll-free telephone number for litigants who have questions about court procedures and the filing of court papers. In Idaho, court assistance officers in all seven judicial districts assist self-represented litigants in person, providing them with educational materials, court-approved forms, limited assistance in completing the forms, information about court procedures, and referrals to legal, community, and social services organizations.

Litigants who use A2J Author [“Turbo Tax for legal papers”] complete forms with guidance from simple, straightforward text and voice instruction, learning about the law and their rights as they go along.

Overcoming Language Barriers and Meeting the Need for Court Interpreters

Significant growth in immigrant populations in rural areas has become an increasingly important challenge for rural courts.⁴ Court administrators’ offices in several states have found innovative ways to ensure that qualified interpreters are available in rural courts for individuals involved in court cases who do not have a good command of the English language. The Idaho Supreme Court has implemented a three-tiered program designed by the National Center for State Courts to certify interpreters in eleven languages. The Georgia Commission on Interpreters, located within the Georgia Administrative Office of the Courts, has implemented significant outreach initiatives to recruit potential interpreters across the state and provides training to interpreter candidates in rural locations via Webinars.

Technology offers additional avenues for ensuring that qualified interpreters are available to rural courts. In Nebraska, courts rely on computers equipped with free Skype™ software and video cameras to provide interpreter services from remote locations when qualified interpreters cannot physically be in the courtroom. The Office of the State Court Administrator in Montana worked with the Montana Legal Services Association to survey district court judges and clerks to obtain an estimate of the number of individuals coming into the courts with limited English proficiency, the resources available for interpreter services, and the need for translated forms. The Nebraska Administrative Office of the Courts initiated a remote interpreter program, through which on-call interpreters are available to courts and probation offices from 9:00 to 11:00 am and 2:00 to 4:00 pm daily.

Strengthening Substance-Abuse and Mental-Health Treatment Services

Nearly all of the states represented at JMI's rural court seminars have established drug courts in some predominantly rural areas, and some have also established mental health courts. Judges and court managers in rural courts note, however, that these courts face some challenges not faced by their urban counterparts—in particular, a paucity of qualified treatment providers and problems of transportation faced by persons eligible for the programs. Despite such challenges, enterprising court systems are finding ways to adapt the principles and services of problem-solving courts in rural locales. For example, the probate court in Richland County, South Carolina, established a mental health court as a voluntary court diversion program to address the inappropriate involvement of mentally ill individuals (with or without substance-abuse issues) in the criminal justice system. Case managers maintain weekly contact with participants in the program, including making home visits and traveling to rural areas of the county to provide services.

Upgrading Antiquated Court Facilities

The courts in many rural communities are housed in their original buildings, often constructed more than a century ago. In Nevada, a Commission on Rural Courts empaneled by the state's judicial council identified old and outmoded facilities as a major problem in most rural courts. The commission, which included legislators, sheriffs, prosecutors, judges, and court clerks, recommended provision of basic security, including metal detectors and security cameras, as a basic need (Judicial Council of the State of Nevada, 2003: 6-8).

Upgrading decades-old court buildings can be a significant challenge. Court leaders in Harris County, Georgia, tapped into the Rural Development Housing

and Community Facilities Programs of the U.S. Department of Agriculture (USDA) to expand the size and enhance the security of their courthouse. Courthouses are included in the list of essential community facilities that may be improved through grants and loans under these USDA programs.⁵

The Key Role of State AOCs

One of the clear conclusions from seminars conducted by the Rural Courts Information Network is that state administrative offices of courts can and should have major roles in improving rural courts and rural justice. A number of state AOCs have already risen to this challenge, and some of their efforts have been discussed above. Additional examples include the following:

- In predominantly rural South Dakota, the state court administrator's office has recently initiated a newsletter, a guidebook, an improved Web site, a descriptive brochure, and orientation materials to better inform court personnel and the public about the work of the state's court system. The office has also worked to strengthen its relationships with the seven circuits through frequent visits, in-service training, orientation programs, and a recognition program. The AOC sponsors annual retreats and leadership institutes to encourage networking and interactions toward rural court improvements.
- AOCs in South Dakota, Nebraska, and Kansas have started sending some types of computer-focused clerical work from larger counties to less-busy smaller ones via the Web, thus allowing smaller courthouses to retain staff and remain open.
- In New York, the AOC has undertaken a major effort to upgrade the state's deeply entrenched town and village justice courts, which predate the 1962 creation of the state's unified court system by nearly 300 years (see New York State Unified Courts System, 2006). This will be a multiyear, multifaceted initiative that includes strong emphasis on integrating the justice courts into the state judiciary's technology system, upgrading court facilities and recordkeeping capabilities, strengthening education and skills training for court personnel, and ensuring availability of indigent-defense services in criminal cases.

One of the clear conclusions from seminars conducted by the Rural Courts Information Network is that state administrative offices of courts can and should have major roles in improving rural courts and rural justice...a number of state AOCs have already risen to this challenge.

- Missouri, Idaho, Georgia, and New York are among the states in which the state AOCs have had major roles in establishing and supporting problem-solving courts in rural areas, including courts addressing drug and alcohol abuse, mental illness, domestic violence, and in some instances the special problems of returning war veterans.
- The Minnesota AOC has taken an “e-everything” approach to business processing in the courts, including initiating a statewide case management system and sponsoring process-reengineering efforts in multicounty judicial districts (see Griller et al., 2010).

Looking Ahead

Two trends stand out in our review of the challenges and progress in rural courts. First, it is obvious that thoughtful applications of modern information and communications technology are increasingly helping to enhance access to courts and are improving the effectiveness of court and justice system operations. Court and court-system Web pages, videoconferencing, interactive Web-based educational programs, electronic filing and recordkeeping, use of e-mail, online payment of traffic tickets and other court-imposed financial obligations, automated case management systems, sharing of court calendars and pending case information, and a host of other applications have already produced major cost savings and improved overall effectiveness. These modern technologies are especially important for rural courts, because they provide mechanisms for overcoming the problems of distance and professional isolation.

Rural courts can meet the challenges they face with confidence through effective use of modern technology and effective collaboration between state court system leaders and rural-court leaders.

The second key trend is the increasingly prominent role played by many state administrative offices of courts in addressing rural court issues. State AOCs have had major roles in enabling the installation and use of computer-based technologies in rural courts. They have also led the way in using technology to provide

or coordinate educational programs for court personnel, interpreter services, and assistance for self-represented litigants. In many states, technological innovations have been reinforced through AOC-initiated statewide and regional conferences that bring together judicial officers and court managers—a recognition that interpersonal relationships and peer networks remain important in enabling courts to capitalize on the potential of modern technology.

While progress has been made in addressing the challenges facing rural courts, it is clear that much remains to be done on some fronts. In many states, indigent-defense services in criminal and juvenile cases remain a major issue, with relatively few states meeting American Bar Association standards for the provision of these services.⁶ Providing a full range of court services in sparsely populated areas will continue to be a challenge, especially in view of the current budget problems in most states.

Rural courts have, however, demonstrated remarkable ability to survive and thrive in the face of budget cutbacks and population movements to urban areas. Court staff members and judicial officers in these courts are necessarily generalists—they must handle a wide variety of case types and adapt to changing circumstances, and they often respond in innovative ways to new challenges. These courts remain important to the life of rural communities and to society’s capacity to provide meaningful access to justice for residents of rural areas. Two of the key trends of recent years—effective use of modern technology and effective collaboration of state court system leaders with rural-court leaders—indicate that rural courts can meet the challenges they face with confidence in their capacity to function as important institutions in their communities.

ENDNOTES

¹ The initiative, funded by grants from the Bureau of Justice Assistance, U.S. Department of Justice to the Justice Management Institute (JMI), has been undertaken in collaboration with the National Association for Court Management (NACM). A key goal of the initiative, known as the Rural Courts Improvement Network, has been to enable peer-to-peer learning and strengthen communications and networking capabilities among rural practitioners.

² A2J Author is being used in 22 states, the U.S. Virgin Islands, and Ontario, Canada.

³ Notably, a 2002 study of programs providing assistance to self-represented litigants in rural areas emphasized the importance of direct assistance in making the court experience fair and meaningful for self-represented litigants (see Henschen, 2002: 57).

⁴ There is ample evidence of relatively high inflows of recently arrived immigrants to some rural areas, particularly areas where there are employment opportunities in certain industries, including tourist services, agriculture, food processing, and light manufacturing. Even when not numerically large, these migration patterns often impact rural areas that have little or no history of assimilating to immigrants—especially when the immigrants' English-language capabilities are limited (see Jensen, 2006).

⁵ Only cities, towns, or unincorporated areas with less than 20,000 population are eligible for these funds.

⁶ Provision of indigent-defense services is fundamentally a legislative responsibility, but courts can have important roles in articulating the need for high-quality defense services. The needs are often especially acute in rural areas, where there is a limited pool of attorneys available to serve as defense counsel. For a critique of the current state of indigent-defense services, see American Bar Association Standing Committee on Legal Aid and Indigent Defendants, 2004.

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THE STEADY GROWTH OF BUSINESS COURTS

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There is a two-decade evolution in the creation of business and commercial dockets within state trial courts. These “business courts” assign specialist judges to manage and decide commercial and business cases and have increased from three pilot dockets in 1993 to over 40 court programs within 22 states in 2010.

The last 18 years have witnessed the creation and development of “business courts,” or “commercial courts,” within state-trial-court civil systems. These are specialized dockets, with one or more designated judges, primarily designed to provide timely and well-reasoned case management and disposition to (1) commercial disputes between businesses, sometimes involving individuals with an interest in the business, and (2) internal disputes over the management and control of business entities.

These state business courts were conceived based on the experience, or belief, that then-existing state trial courts were unable to address commercial and business disputes expeditiously, consistently, and reliably. Whether empirically warranted, the controlling belief in many large jurisdictions was that the state trial judges lacked the knowledge and experience base, as well as the facility with case-specific management tools, to ensure timely adjudication and well-reasoned decision

The growth of modern business courts corresponds to “the rapidly increasing complexity, rate of change and globalization of business, which has driven the demand for dispute resolution processes that can accommodate the needs of modern business.”

- North Carolina Business Court Judge Ben F. Tennille

making in business and commercial disputes. In some jurisdictions, the concern was exacerbated by relatively slow moving general calendars with multiple judges handling different aspects of a single case, instead of having one assigned judge for the entire case.

The idea for creating specialized commercial or business dockets was the subject of serious discussion in the late 1980s and early 1990s, most notably in California, Chicago, and New York. California, after long debate, ultimately rejected the idea of a specialized business court in favor of specialized complex-litigation courts; i.e., procedural specialization in handling all forms of difficult cases was chosen over subject-matter specialization.¹ In Chicago and New York, business court dockets were developed and became operational in 1993. Since that time, state court commercial and business dockets have grown steadily, with virtually all such dockets enduring after their creation.

In seeking specialized dockets, businesses were not looking for fixed results. Nor were they seeking tort reform, as the cases at issue would most typically involve businesses or sophisticated parties as litigants, not consumers. Commercial and business litigants did not need to know that they were going to win the case or cap their losses, but simply that a decision would be made in a reasonable time and that the decision would have an articulated core of legal principles shaping the court’s ruling. Such express judicial reasoning would not only promote confidence in the process, Delaware’s Chancery Court being the aspirational model, but also provide future guidance for conducting ongoing business practices outside the courtroom. Theoretically, a business might look favorably on a city, region, or state with courts that could engender such confidence.

Further, as observed by North Carolina Business Court judge Ben F. Tennille, whose business court tenure extended from 1996 until his retirement in March 2011, the growth of modern business courts corresponds to “the rapidly increasing complexity, rate of change and globalization of business, which has driven the demand for dispute resolution processes that can accommodate the needs of modern business.” Thus, there is an evolution in the business environment to which court systems have responded by creating business courts, just as court systems have responded with other specialized court programs to address newly developing problems and conflicts.²

Business Courts Creation and Development

1993	Chicago Commercial Calendar; judge added later in year	Commercial Pilot Parts Manhattan	Complex commercial case assignment, Essex County, NJ
1994	Judge added in Chicago		
1995	Two judges added in Chicago	Commercial divisions created in Manhattan and Monroe County, NY	
1996	North Carolina Business Court	Commercial pilot projects, Bergen & Essex counties, NJ	
1997	Judge added in Chicago		
1998	Commercial divisions added in Nassau, Erie, and Westchester counties, NY	Connecticut Complex Litigation Docket	
2000	Philadelphia Commerce Court	Boston Business Litigation Session (BLS)	Reno, NV Business Court
	Judge added in Chicago	California complex-litigation pilot program in six counties	
2001	Las Vegas Business Court	Rhode Island Business Calendar	
2002	Commercial divisions added in Albany, Suffolk, and Kings counties, NY	Boston BLS assigns judge part-time (6 months) for second session	
2003	Maryland - Business & Technology Case Management Program, statewide	Delaware Chancery Court technology jurisdiction created for adjudication and mediation	Judge added in Philadelphia
	Phoenix complex-litigation pilot program		
2004	Orlando - Complex Business Litigation Court		
2005	Atlanta Business Case Division	Boston BLS expanded to surrounding counties; additional judge assigned part-time (6 months) creating two full sessions	North Carolina Business Court adds two judges in additional counties
	Commercial Division added in Queens County, NY	Third judge added in Nassau County, NY Commercial Division	
2006	Maine Business and Consumer Docket	Miami Complex Business Litigation Section	Judge added in Orlando
	Eugene, OR Commercial Court has express business and nonbusiness complex-litigation-court jurisdiction	San Mateo County, CA Complex Civil Litigation Program	
2007	Tampa Complex Business Litigation Division	Pittsburgh Commerce and Complex Litigation Center	South Carolina Business Court Pilot Program
	Gwinnett County, GA Business Court Pilot Program	Commercial Division added Onandaga County, NY	Colorado Springs, CO Commercial Docket
2008	Ft. Lauderdale Complex Business Litigation Subdivision of Complex Litigation Unit	New Hampshire Business and Commercial Dispute Docket	
2009	Ohio Court of Common Pleas Commercial Dockets pilot in five counties	Parties from any Massachusetts County may access BLS by agreement	Delaware Chancery Court given commercial arbitration jurisdiction
	South Carolina Business Court pilot extended	Birmingham, AL Commercial Litigation Docket	Judges added to Las Vegas and Reno Business Courts
2010	Delaware Superior Court Complex Commercial Litigation Division	West Virginia adopts a law to create business court divisions and Supreme Court of Appeals appears to be moving toward implementation	Oregon Supreme Court establishes Oregon Complex Litigation Court
	Michigan State Bar Judicial Crossroads Task Force adopts recommendation for specialized-business-court docket		

Business court jurisdictional formats vary, and there is no one universal model among existing business courts. This reflects the fact that different models better suit different jurisdictions' docket size, case management objectives, or both.

A common jurisdictional model in large cities, such as New York's Commercial Division, requires (1) a specific jurisdictional amount in controversy and (2) that the case's subject matter falls within a defined list of case types that set the parameters of the business court's jurisdiction. There is no additional express procedural-complexity requirement. Another paradigm is the complex business court model, such as Maryland's Business and Technology Case Management Program (BTCMP), where jurisdictional mandates include not only some form of business, technology, or commercial dispute, but also a list of criteria that a case must meet to be considered "complex."³ This is a more subjective model and requires greater exercise of the judicial gatekeeping function. There is also a hybrid model, such as now found in the North Carolina Business Court, where certain specified case types automatically fall within the business court's jurisdiction, and the inclusion of other cases outside those categories requires procedural complexity or the presence of novel issues that will make important advances in the law.

As set forth in the accompanying charts, there has been a steady trend in the creation and growth of business courts since 1993.⁴ One measure of business court development is to count the number of states in which these dockets are located.⁵ Viewed by this measure, taking 1993 as year 1 and excluding the Delaware Court of Chancery as it existed in year 1,⁶ business courts were created in four states during the first five years of the modern business court movement (1993-97). In the next five years (1998-2002), business courts were established within another four states.

In the next five years (2003-07), business courts were created within another seven states. Delaware's Court of Chancery is included within this number because its jurisdiction was transformed to accommodate a subset of purely commercial disputes without an equity component. The Lane County, Oregon, Commercial Court was not included because it could be viewed as a complex-litigation court, rather than solely as a business court, a matter addressed in more detail below. In the three years from 2008-10, business courts were added within three more states that previously had no business court dockets. Thus, in years 11 through 18 of the

modern business court movement, business courts were created within ten states, compared to eight in the first ten years. These numbers do not include states where a business court's creation was authorized but never implemented, or implemented but never genuinely used by litigants.

A more significant measure of growth, however, is the number of individual jurisdictions in which decisions had to be made to establish a business court. For example, a single (though wide and broadly collaborative) decision was made in Maryland to create the statewide BTCMP in all of Maryland's judicial circuits; but four separate and distinct decisions had to be made by administrative judges in Florida's Ninth, Eleventh, Thirteenth, and Seventeenth judicial circuits to establish business courts in those individual circuit courts. The number of decisions to create business courts, either by legislatures passing laws then signed by a governor, by administrative judges issuing orders in an individual jurisdiction within a state, or by a state's highest court creating a business court docket, is more reflective of the growing trend toward creating business courts because the choice existed in each distinct instance not to create a business court.

Viewed in this light, there were 6 business courts created in the first five years; 11 business courts created in years 6-10; 13 business courts created in years 11-15; and 5 business courts created in years 16-18. This would make 17 business courts in the first ten years, and 18 business courts in the following eight years, with West Virginia apparently on the verge of making that 19. As above, these numbers do not include circumstances where a business court was authorized but never implemented or implemented but never genuinely utilized. However, it is worth observing that under this "decision-making" standard, even in the few instances where a law was passed but not implemented, or a summary-proceeding-type docket with unusual features was adopted but not used by lawyers and litigants, there were still some constituencies that decided to create a business court.⁷

This does not end the analysis. By express or practical definition, complex-litigation-program judges (California, Connecticut, Oregon, and Phoenix) will hear complex commercial and business cases among other substantive case types. These judges may not be as specialized as those with a docket solely dedicated to business and commercial cases, but they will be handling complex business and

commercial cases more often than judges with more generalized dockets. This will increase their experience, and they will thus develop a greater degree of actual knowledge in (1) these subjects and in (2) the case management dynamics of business and commercial cases. In this regard, it is significant that a number of judges from jurisdictions with specialized-complex-litigation dockets, including some specialized-complex-litigation judges themselves, have become members of the American College of Business Court Judges.

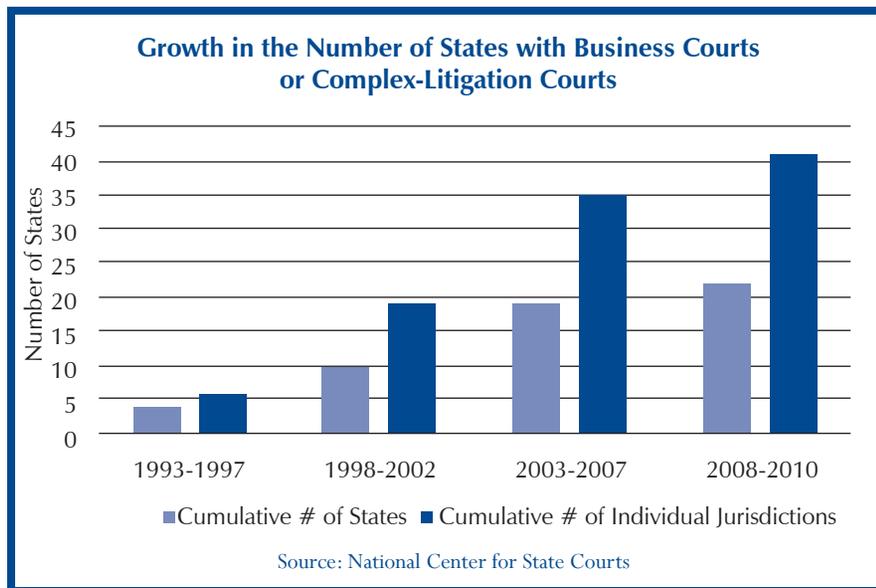
If these complex-litigation dockets are included in the measure of business court growth, then the results are as follows. Using the measure of growth by state, total business court numbers in the first five years (1993-97) remain the same at four, but the next five-year period increases to six, and years 11 to 15 increase from seven to nine. The final three years stay the same. Thus, the total in the first ten years is 10, and the total for the ensuing eight years is 12, for an 18-year total of specialized business courts being created within 22 states, with West Virginia on the verge of making that 23. Using the measure of growth by implementation decisions made: 6 business courts were created in the first five years; 13 business courts were created in years 6-10; 16 business courts were created in years 11-15; and 6 business courts

were created in years 16-18. This would make 19 business courts created in the first ten years, and 22 business courts created in the following eight years, for a total of 41, with West Virginia seemingly on the verge of making that 42.

As nearly two decades have passed, there is also some ability to measure whether business courts will survive once created and operational. Of the business courts that have been unsuccessful, including the summary proceedings in the Delaware Superior Court and Milwaukee Circuit Court, and the assignment of business court cases to chancery judges in New Jersey on an expedited nonjury basis, none (at least originally) were based upon a traditional format that was enhanced through judicial specialization alone. In other instances where business courts have been studied or created but never actually implemented or made operational, there have been political or practical issues preventing the business court from becoming operational, the analysis of which is beyond the scope of this article.

Of the business courts not relying upon atypical procedural formats, which focus instead upon enhanced judicial specialization, none have failed. The Commercial Division in New York and Commercial Calendar in Chicago have been functioning, and growing, over the last 18 years. North Carolina's Business Court is 15 years old and has expanded and developed over that decade and a half; and at least six other business courts will be ten years old or more by the end of this year. Numerous pilot programs have been extended or permanently implemented; judges have been added to a number of business courts; and the breadth of geographical jurisdiction has been expanded in some business courts.

Two other points are worth considering in evaluating future business court evolution. First, Delaware is generally perceived as preeminent in business litigation. This is based primarily on its deep history, established jurisprudence, and the high quality of its jurists. During the first ten years of the modern business court movement, Delaware Chancery Court basically remained the same 200-year-old equity court of limited jurisdiction that did not compete with the modern business courts in purely commercial cases. In the second decade, however, Delaware's three branches of government worked to expand chancery's jurisdiction twice, broadening its scope to permit the adjudication, mediation, and arbitration of some forms of commercial and technology claims otherwise not within traditional



equity jurisdiction. In 2010, Delaware went further and created a specialized-commercial-court docket in its law court, the Delaware Superior Court's Complex Commercial Litigation Docket. These steps can be reasonably understood not only as meeting competition from other states' court systems, but as part of a judicial evolution to better meet new challenges facing all courts.

The second point is the international development of commercial courts. During the same time period that modern U.S. state business courts have been evolving, various forms of commercial courts have been created or have expanded in, e.g., Abu Dhabi, Argentina, Australia, Bermuda, the British Virgin Islands, Canada, Croatia, Dubai, Egypt, England and Wales, Ghana, Guyana, Hong Kong, Ireland, Israel, Lesotho, Malawi, Malaysia, Mauritius, Morocco, New Zealand, Northern Ireland, Qatar, Rwanda, Saudi Arabia, Scotland, Serbia, South Africa, Spain, Tanzania, Thailand, Turkey, Uganda, and Ukraine. Austria, Belgium, France, England, the Netherlands, and Switzerland have long-standing commercial courts. Other nations, such as India, are currently considering commercial courts and have studied U.S. business courts, among others, in that process.

This parallel growth or enhancement in international commercial courts is consistent with the growth in the United States. It gives broad context to the view that commercial and business courts are necessary components of a region's economic health and that their absence creates a competitive disadvantage with other regions. Thus, business court development is not limited to how a business entity may view the overall economic environment in one U.S. city compared to another U.S. city, but to how that court system compares to cities or regions in other nations, as well.

ENDNOTES

¹ Some courts' civil systems have both specializations within their dockets. Thus, in practice, there is no inherent reason that a specialized business court docket must be excluded from a civil system if the court system were to include a complex-case specialization as well. Second, the jurisdictional definition of what constitutes a complex case could encompass business and commercial cases falling within that definition, as well as other subject matter. If so, designated complex-litigation judges will have repeated experience with a distinct subset of complex business/commercial cases, will develop a greater expertise in handling those cases over time compared to judges with a general docket, and will effectively become specialized-business-court judges relative to those with a general docket.

² Judge Tennille shared these observations with the author in December 2010.

³ Maryland Rule 16-205(c), governing assignment to the BTCMP, directs the assigning judge to consider the following factors in actions presenting complex or novel commercial or technological issues: "(1) the nature of the relief sought, (2) the number and diverse interests of the parties, (3) the anticipated nature and extent of pretrial discovery and motions, (4) whether the parties agree to waive venue for the hearing of motions and other pretrial matters, (5) the degree of novelty and complexity of the factual and legal issues presented, (6) whether business or technology issues predominate over other issues presented in the action, and (7) the willingness of the parties to participate in ADR procedures."

⁴ The information in these charts and concerning unsuccessful programs can be found in American Bar Association Section of Business Law's Committee on Business and Corporate Litigation, 2004-11; Bach and Applebaum, 2004; Minnesota Judicial Branch, 2001; and Toutant, 2006.

⁵ This does not mean the business court is statewide; it only means that a business court was created somewhere within a state.

⁶ Since 2003, the Delaware Chancery Court's jurisdiction has twice changed to add some entirely nonequity commercial and technology disputes.

⁷ One lesson from these unutilized dockets and nonjury programs is that a significant population of litigants and lawyers are either entrenched in the familiar litigation structures or are genuinely more interested in maintaining traditional forms of litigation for considered reasons. Some, even including judges, argue, e.g., that jury trials are inconsistent with business-docket specialization, an issue not addressed herein. For the present, for reasons not the subject of this article, it appears that litigants and lawyers using business courts are primarily seeking knowledgeable and efficient judicial operation and oversight of traditional litigation structures.

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**USABILITY IS FREE:
IMPROVING EFFICIENCY BY MAKING THE COURT MORE USER FRIENDLY**

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Court managers will need a broader array of service-delivery strategies as courts face increasing demands and fewer resources. The standard solution, to hire more staff as intermediaries, is becoming increasingly infeasible, and the user-friendly court, relying more on court users to participate in service delivery, will become a more important strategy.

The Usability Problem and the Intermediary Solution

Courts are not designed for the convenience of end users. As a result, American state trial courts rely heavily upon intermediaries to help people use the system. Attorneys (at least for those litigants with access to representation) translate real-world problems into legal arguments and pleas for relief and help litigants navigate the court process. Paralegals and self-help Web sites (e.g., Nolo.com) provide generic explanations of court processes without the specificity or expertise of attorneys. And, of course, friends and family provide a sort of last resort for many people who cannot obtain professional help.

Another group of intermediaries are the court staff who help people file papers, direct them to the right courtroom, process and distribute records of proceedings, provide mandate reports to other agencies, assemble jury panels, provide language interpretation, etc. Indeed, the history of court administration can be read as a history of the increasing professionalization—and expansion—of this group.

Over the past few decades, American trial courts have seen an explosion in the breadth of their responsibilities: from a focus on recordkeeping as clerk of court, to administration of a complex administrative support system (Friesen, Gallas,

Relying more on court users goes beyond the purchase of an interactive voice-response system. It demands fundamental changes not only to court processes, but also to the mindset of court personnel—especially managers.

and Gallas, 1971), to support for managing the flow of cases through the court (Solomon and Somerlot, 1987), to a sudden recent burgeoning of responsibilities, many of which are new to the justice system (Flango, Campbell, and Kauder, 2007):

- Health and social-welfare services, as in drug courts, homeless courts, mental health courts, housing courts, etc. (Berman and Feinblatt, 2005);
- Language and cultural services (Martin, Weller, and Price, 2008);
- Legal training and advice (Zorza, 2002);
- Public education (Persin, Fallahay and Fruin, 1999); and
- The supervision and care of those deemed unable to care for themselves (i.e., in probate guardianships and in foster care).

In each of these areas, commentators suggest that courts respond with new intermediaries—such as Casey and Hewitt’s “case level service coordinators” (Casey and Hewitt, 2001). Zorza (2002) identifies changes in physical space, process, and procedure, and other changes that can make the process more user friendly—but also suggests that “each litigant could be assigned a ‘personal clerk’ in the office that manages submissions” (Zorza, 2002: 47).

After all, if you want it done right, then do it yourself—or hire a good staff person.

There are several problems with such a heavy reliance on staff intermediaries:

- Such bureaucratic solutions tend toward “goal displacement,” wherein staff become more concerned with formal rules and procedures than substantive outcomes, such as justice and fairness (Merton, 1968). The solution to such problems is typically more rules and procedures, which

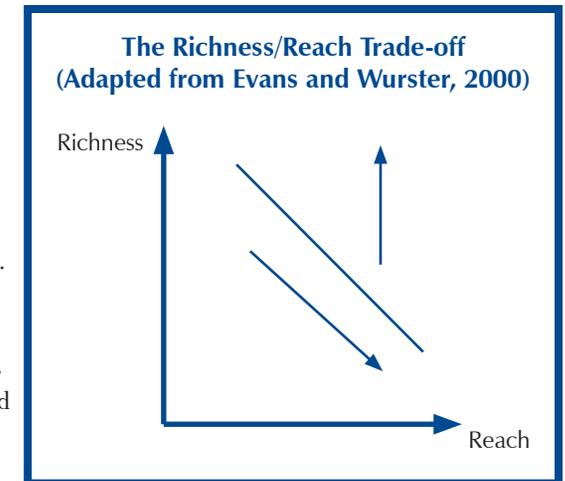
- leads to a vicious circle of organizational complexity (Meyer, 1985).
- Court staff acting as intermediaries raises questions about both the proper and feasible role of the courts. As the Bureau of Justice Assistance noted after conducting a focus group of court administrators from large, urban courts: “Some focus group participants felt that courts were being pushed to be the gatekeepers for social services or health problems that were more appropriately handled by the relevant systems involved, such as social services and health care” (Bureau of Justice Assistance, 2008).
- The typical intermediary solution often creates “sidecar” programs that remain outside normal court operations. The literature on problem-solving courts, for instance, has long advocated for the “integration” and “institutionalization” of these programs, but the calls continue, since the goal remains far out of reach of most courts (Rottman, 2000; Casey and Rottman, 2001).
- People are becoming more accustomed to, and in many cases, demanding of, “do-it-yourself” options, not only because they tend to be cheaper, but also because they offer more flexibility and freedom than relying on a salesperson, clerk, etc.
- Finally, state trial courts can no longer afford staffing-heavy solutions. The “new normal” for the American economy and most units of government will only exacerbate the chronic underfunding of the state trial courts (Flango et al., 2009; ABA Coalition for Justice, 2009).

Nonetheless, the challenges of unrepresented litigants and the dysfunctions of social, penal, and other justice-related systems continue. Courts are rapidly approaching a *usability crisis*, where the honest and well-intentioned efforts of people to pursue legal remedies will result in chronic failure of the system to serve them. If courts continue to respond to increasing demands by increased staffing, the most likely outcome will be a Kafkaesque system of overworked bureaucrats who lack the resources to maintain minimally acceptable levels of access to justice in the courts’ mission-critical areas.

Disintermediation Through Design for Usability

The efforts of many businesses and government agencies to “disintermediate”—to remove, or radically redesign, the intermediary function—suggests a path to courts

adjusting to the conflicting pressures of access to justice in the post-recession world. Evans and Wurster (2000) provide a useful guide. They begin with the “trade-off between richness and reach” (Evans and Wurster, 2000: 73). Richness refers to the ability of a service to fit the specific needs of a particular customer. When I go to my neighborhood bookstore, and have a long conversation (high bandwidth) with a bookseller who knows me well (can customize her responses) and we have a chance to chat (interactivity), I come out of the bookstore with the book I really want.



But recently, online stores such as Amazon.com are driving traditional “brick-and-mortar” bookstores out of business—or at least driving them online. Critics of such online disintermediation strategies point to the user-hostile nature of many automated services—such as interactive voice-response systems, where the helpful face-to-face contact of a well-trained *person* at the window is replaced by an impersonal and tedious *system*.

But these critics fail to recognize that disintermediation has two distinct modes. Evans and Wurster point out that the trade-off between richness and reach—the simple truth that you cannot have an in-depth conversation with every customer at once—can be attacked in two distinctive ways.

Consider the evolution of the financial industry: The first phase of disintermediation found firms moving *down the trade-off curve*. Thus did e-Trade begin to displace traditional firms offering mutual funds, simply through offering online stock trading. Many potential investors left firms such as Merrill Lynch for e-Trade, choosing not to pay the time and expense of a relationship with a full-service

If courts continue to respond to increasing demands by increased staffing, the most likely outcome will be a Kafkaesque system of overworked bureaucrats who lack the resources to maintain minimally acceptable levels of access to justice in the courts' mission-critical areas.

brokerage. This was unashamedly an increase in reach *at the expense of richness*. e-Trade never aspired to provide the kind of high-bandwidth, specialized, and interactive service one could get from a couple hours with one's own broker.

Had the online brokerage business stopped there, Merrill Lynch might still be flourishing (had they survived the unrelated meltdown of the global financial sector). Building on top of the e-Trade experience, new investment firms learned how to package rich, but easy-to-access financial information on their Web site. Schwab was able to provide not only cheap and easy trades, but also much of the information that an investor would need to make an informed trading decision. They did not merely trade richness for reach—they *improved the trade-off*.

The first strategy, a *broadcast* strategy, is the sort that is roundly criticized: interactive voice-response systems, for instance, that give the same message to everyone and demand the user navigate on *their* terms. The newer online services, however, pursuing a *usability* strategy, do not merely push great loads of information on users. They help people navigate; they package information in more useful ways.

Many courts are pursuing the broadcast strategy, for instance by putting their traffic payments online. Often, these changes can be made by purchasing off-the-shelf products that fit (relatively) seamlessly into the existing court organization.

Those courts pursuing usability innovations, by contrast, are finding a much richer, more user-satisfying—and often cheaper—set of services. In many areas, courts are placing less reliance on a *concierge* model of service provision and a greater reliance on court users to get things done.

Usability Strategies: From Full Service to Self-Help to Self-Service

Relying more on court users goes beyond the purchase of an interactive-voice response system. It demands fundamental changes not only to court processes, but also to the mindset of court personnel—especially managers.

Self-Help

The classical example of self-help is, of course, court-based self-help for unrepresented litigants. In California, the first self-help response was intermediation: the hiring of attorneys who, in one-on-one sessions with unrepresented litigants in child support proceedings, provided great richness with little reach (State of California, 1996: Assembly Bill 1058).

Over time, courts recognized the impossibility of providing one-to-one service at the needed scale. Two forms of broadcast strategies emerged: One approach packages the frequently asked questions on paper and online to make the answers more easily accessible to a wider number of people. A second broadcast strategy provides help through clinics and workshops, rather than one-on-one. Both of these methods were explicitly recognized as compromises in the richness of help provided. Both of these strategies leave intact a hard-to-navigate system.

In the Los Angeles Superior Court, while those broadcast methods are still used, the court has developed a usability-based self-help system, in which litigants learn enough about a simplified family-law process to navigate for themselves. Workshops are tailored specifically to certain phases in typical dissolution cases; litigants move through the workshop sequence as their cases progress. A common, simplified procedural language is used in the courtroom and taught in clinics. Clerk's staff work in the self-help center, easing the filing process. Some bureaucratic mysteries are removed by checklists, which show, for instance, the most common reasons why the clerk's office rejects filings.

Typically, the courtroom (and, to a lesser extent, the clerk's office) is the center of the universe; self-help staff struggle with litigants to adjust to them. In Los Angeles, the courtroom and clerk's offices are being re-centered on the self-help center to make the process more usable.

Do-it-yourself services are not for everyone, but courts would do well to expand the range of types of service they offer, from full service to self-help to self-sufficiency. To do this, however, involves more than the adoption of new programs; it involves fundamental changes in how court managers and their employees view their own responsibilities, and how they view court users.

Self-sufficiency is not for every court user. The court maintains a repertoire of service strategies: standard intermediaries (e.g., face-to-face help from attorneys through legal-services partners), broadcast-based self-help (e.g., a self-help Web site; Family Law Information Centers) and the usability-based disintermediation described above. This allows the court to provide the right level of assistance to the right court user.

Juror Management

Traditional jury management systems are based upon the presumption that every juror is trying to escape jury duty and to thwart the efforts of court staff to control recalcitrant jurors. Thus, we treat prospective jurors like cattle: roping them in, penning them up, and sending them off in small groups.

The user-friendly jury management system emerging in the Los Angeles Superior Court helps prospective jurors do their duty without compromising the needs of the jury system:

- Online juror orientation allows jurors to comply with orientation requirements in the comfort of their own homes, rather than in a jury assembly room.
- Juror-controlled online postponement of service allows jurors to select their own date of service (within preexisting constraints reflecting the needs of the court).

- Elimination of the jury assembly room, through direct summoning to the courtroom, both saves assembly-room staffing and eliminates useless wait time for the juror.

Each of these innovations not only makes serving jury duty easier and more pleasant, but also saves staff time.

But each of these innovations required a change in management approach, since each requires the jury manager to trust jurors—and to create a more foolproof system. For instance, the schedule of available online postponements is limited, reflecting the anticipated needs of the system for jurors. That system, and the ability to summon to the courtroom, required data and systems that allow the jury commissioner to reliably project jury needs into the future.

Usability strategies involve more than simply dumping tasks online. We can identify seven new types of understanding that such strategies typically require of court managers:

1. Understanding of the needs and desires of court users;
2. Understanding users' abilities—and sorting (or supporting self-sorting) of users into different service levels, each with appropriate supports;
3. Understanding of the court's processes, so as to build in foolproofing and safeguards that will ensure that users are guided in the right directions;
4. Understanding of legal constraints, so as to choose which user activities are allowable, and which must be prohibited;
5. Having a greater appreciation of options for where and when to deliver services (e.g., online, at the user's convenience);
6. Being able to redesign court processes to greater reflect the needs of court users, relative to court personnel; while
7. Avoiding the ubiquitous temptation to fill in the usability gaps by hiring staff.

User Model			
	Full service	Self-help	Self-service
Process design guided by	Formal rules and procedures	What is teachable	User needs
Time and place for service	Our time, our place (waiting in line)	Our place, off-calendar	Anytime, anywhere
User skills required	Ability to follow directions	Ability to learn	Equal to the demands of the system
Management and staff trust in user	Low	Moderate	High
Staff skills required	Expert bureaucrat	Good teacher, guide	System diagnostician, engineer
Employee motivation	Extrinsic: having a reward for following the rules, punishment for ignoring them	Intrinsic and interpersonal: helping others	Intrinsic and impersonal: building and maintaining a good system, in the hope that it is a help to court users
Risk management focus	Staff malfeasance	Staff identification with users	Users who game the system

Conclusion

Meeting the challenges of expanded missions and demanding court users with fewer resources will require a broader set of tools than the traditional approach of hiring more court staff. Disintermediation need not involve degradation of service. Reengineering processes for greater usability not only can save staffing costs, but also enhance the court user's experience. Do-it-yourself services are not for everyone, but courts would do well to expand the range of types of service they offer, from full service to self-help to self-sufficiency. To do this, however, involves more than the adoption of new programs; it involves fundamental changes in how court managers and their employees view their own responsibilities and how they view court users.

When court managers do this, their thinking changes—particularly in terms of maintaining *control* over court users. A wider range of service options appears:

- Not only the traditional *full service*: investing in staff intermediaries to help and to maintain control over users;
- But also *self-help* options that help users help themselves; and
- *Self-service* options that let users do things themselves.

Putting one's faith in self-sufficient court users is not for every service (for instance, only on TV would Mayberry sheriff Andy Taylor allow a criminal defendant to lock himself up). And it is never done without careful consideration of user abilities and motivations; demands on staff skills and motivation; and risk management issues.

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IT IS ALL ABOUT THE PEOPLE WHO WORK IN THE COURTHOUSE

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Tough budgetary times mean lower morale at the courthouse. What can judges do to improve staff morale and, thus, the administration of justice?

In 1906 one of the founding fathers of judicial administration, Professor Roscoe Pound, gave a speech: “The Causes of Popular Dissatisfaction with the Administration of Justice.” Although there have been enormous improvements to the administration of courts since then, courts continue to have challenges that cause popular dissatisfaction with the justice system. Pound said one reason that drove dissatisfaction was a belief that the administration of justice is an easy task to which anyone is competent. Nothing has changed since Pound’s speech on that belief, but for those of us who are in the field of judicial administration, we know how painfully complex this system has become.

The most effective court leaders will challenge their courts to face problems for which there are no simple, painless solutions.

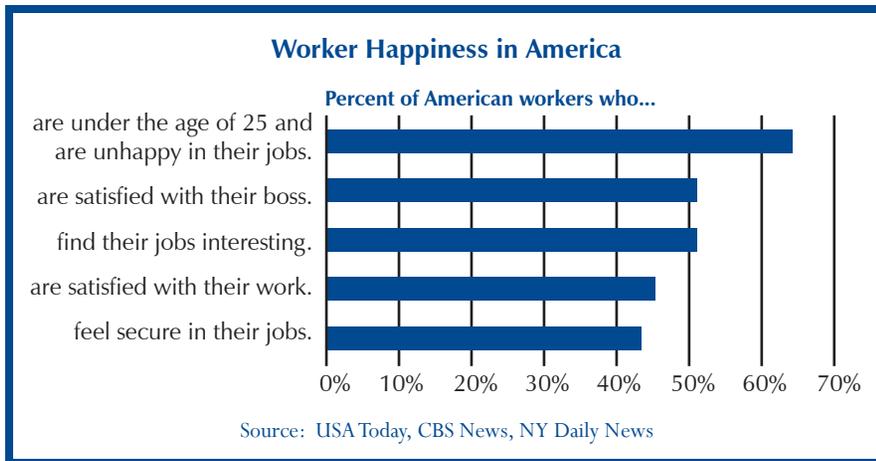
During the last several years there has been a sea change in the funding for courts and in attitudes toward public employees. Regardless of how courts are funded, with rare exception courts are facing budget challenges that dwarf any that they have seen before. Courts have laid off and furloughed employees, frozen hiring and salaries, and complained loudly about the lack of funding. Budgets

are critical, but courts are in an era in which the political mantra for many is to question the work ethic and commitment of public employees in language that can hurt. Vitriolic language about public employees may be good politics, but that language has a negative effect on the morale of those who work in the courthouse. Public-employee bashing compounds the courts’ budget challenges.

One of the assumptions of public employment has been that there was job security that would be followed by a reasonable pension. The pay that public employees received may not have been as good as what the private sector was offering, but there was safety, security, and the prospect of a decent retirement. To illustrate where we are, this year 75 percent of the nation’s school districts will lay off teachers. That is not great job security. Public-sector workers earn less than their private-sector counterparts with equal educational backgrounds. Although state pension benefits are frequently better than those of the private sector, most public employee pensions are not lavish. Now those wages and benefits are being challenged. There is no safety in continued employment or in retirement. Many states are questioning whether they can offer the pensions that were offered in the past, and some are even suggesting rather dramatic steps to change the pension benefits that employees have already accrued. There are proposals, for example, to allow states to go through bankruptcy, which would allow them to dramatically renegotiate public-employee pensions.

The thrust of this article is not to argue what should be done with respect to budget decisions. States have managed to close \$170 billion in budget gaps since 2009, but the next fiscal year is expected to be even worse, with budget shortfalls projected to be in excess of \$140 billion. There is a time and a place for court-funding discussion. Court leaders cannot print their own money, but they can have enormous positive (or negative) impact on the morale of the courthouse workforce. Many of the funding debates and discussions are conducted in forums in which court leaders are not able to unilaterally dictate the ultimate results. Where court leaders can have an influence is courthouse-employee morale.

There has been a suggestion that there is a clash of cultures in a courthouse—the professional culture (judges) and the organizational culture (everyone else). But when it comes to analysis of courthouse morale, there may be a troika of entities to consider: judges; court administration, such people who join national and local associations or may have professional degrees in court administration; and line workers, who perform many tasks not even peculiar to the judiciary. Line workers perform data entry, staff magnetometers at the courthouse entrance, and perform a myriad of other essential tasks. But the role they play is not particularly glamorous, and line workers may not even be aware that what they do contributes to the court’s mission to dispense justice.



There are no reliable statistics on courthouse morale, but if the courthouse workforce reflects the nation as a whole, courts are in trouble. Worker happiness in America is the lowest in history.

Public-sector employee morale has reached a new level of discontentment. One study showed a dramatic drop in public-employee morale just in the last six months. There is worry, disorder, alienation, and discouragement. All three parts of the courthouse troika (judges, senior court administration, and line staff) feel like they are being asked to do more for less—not just in terms of salary, but also in terms of the psychic compensation or a positive work environment that is essential for motivating the best in all of us.

The danger in the current economic situation is that court leaders will hunker down. They will try to solve the budget problem with more short-term fixes, such

To survive these times, courts will need to change the key rules of the game, but to do that they need a workforce that is prepared to effect change. Panic, fear, and low morale are not conducive to creative change.

as tightening controls or enacting across-the-board cuts, wage freezes, or furloughs. The most effective court leaders will challenge their courts to face problems for which there are no simple, painless solutions. Courts face problems that will require everyone, including lawyers, to learn new ways. There really is not an option to defend every legacy practice to the end. Effective court leaders will use the present turbulence to build for the future and bring closure to part of the past. To survive these times, courts will need to change the key rules of the game, but to do that they need a workforce that is prepared to effect change. Panic, fear, and low morale are not conducive to creative change. Courts need a workforce that can think creatively.

The economy presents courts with many challenges. There are technical challenges, such as how to deal with fewer dollars or how to introduce technology that is efficient and effective for the court. Those challenges, as complex as they seem, can be answered by technical experts. But the biggest challenge courts face is the ability to adapt, to focus on significant and sometimes painful shifts in people's habits, status, role, identity, and way of thinking. This is true for judges, senior court administrators, and line staff.

In this period of turbulence, the most difficult topics must be discussed. It is not an easy era to be a leader, and a natural tendency is not to welcome dissent or embrace task conflict. Dissenters can be obstructionists and a pain to deal with, but dissenters who provide a different perspective need to be heard. Court leaders need to listen to unfamiliar voices and set a tone for candor and risk taking. Now, more than ever, tone is important in the courthouse.

The subject of motivation or employee morale is not clearly understood and, all too frequently, poorly practiced. To understand motivation, one must understand human nature and therein lies the problem. Many courts have become reasonably good at thinking about how to motivate people who appear before judges, or are eager to understand concepts like procedural fairness in the courtroom. There is interest in how social science can assist judges in decision making. Evidence-based sentencing and procedural fairness are hot topics in judicial education. What courts need is evidence-based court leadership and procedural fairness for those who work in the courthouse. Quite apart from the beneficial and moral imperative of treating

... Research shows that well-motivated employees are more productive and creative. People need positive reinforcement. People thrive if there are high expectations.

colleagues and employees with respect and dignity, all the research shows that well-motivated employees are more productive and creative. People need positive reinforcement. People thrive if there are high expectations. The most successful courts are willing to think about how to satisfy employee needs.

Although social scientists can tell us a lot about motivation, fostering great morale is an art, not a science. Within the field there are different schools of thought. With rare exception, many judges and some court administration leaders may not be particularly well grounded in what the social scientists tell us makes a difference and what does not. Court leaders cannot allow themselves to be guided through this turbulent era by their own myths about employee morale. Today's court leaders need to ask how they view the courthouse work staff, what biases they bring to the analysis, and what theory about human behavior in the workplace best suits their courthouse needs.

Because the troika of court employees is quite disparate, different motivational theories may apply to each group. Court leaders need not be able to teach a course in motivational theory, but they need to understand how to apply such thinking in the courthouse. For example, Frederick Herzberg's motivational theory, reduced to its simplest form, is people work first and foremost on their own self-enlightened interest because they are truly happy and mentally happy through work accomplishment. Assuming that theory is true, it is a great theory for judges, but may not explain how best to deal with line staff.

A second example is Abraham Maslow's motivational theory. He argues that there is a ranked order of motivating factors: (a) interesting work, which is likely to be found for judges and senior court administrators and perhaps less likely for line staff; (b) good wages, which is something that court leaders cannot unilaterally

provide; (c) full appreciation for the work done, which can be provided for the whole troika; (d) job security, which is a big issue for line staff and perhaps court administration, but probably less so for judges; (e) good working conditions, which are necessary for the whole troika; (f) promotions and growth in the organization, which are least likely a concern for judges, but more so for court administration and line staff; (g) feeling of being in on things, which is a concern for all of the troika, but a challenge to accomplish; and (h) personal loyalty to fellow employees or camaraderie, which is important for the whole troika but potentially a challenge in trying to get everyone to view themselves as a comrade.

Even if court leaders' knowledge about motivational theory is suspect, at a minimum court leaders need to be disabused about common courthouse-morale myths.

Myth 1. I'm the leader; I can motivate people. Frankly, many court leaders are charismatically challenged. For the most part, people need to motivate themselves, but a good court leader can establish an environment where employees motivate and empower themselves. The more an individual or a group of people understand the nature of a problem, the more effective they will be in solving it. Put another way, the difference between hallucination and vision is how many people see it. Courts cannot be led by people with hallucinations. Effective court leaders must articulate a vision everyone can see and set up that environment where people feel motivated and empowered.

Myth 2. Fear is a good motivator. At best, fear is a good motivator for a very short period. Fear of judges plagues many courthouses and contributes to low morale in court administration and line staff. It is hard for line staff to feel like a judge is a colleague if they are afraid of the person. The power imbalance between the troika explains why fear occurs, but it does not justify permitting that fear to exist or continue. Jody Urquart says there are three ways to motivate people to work harder, faster, and smarter: threaten them, pay them a lot of money, or make their work fun. The first two are ineffective. But making work fun has a track record of effecting real change. Creativity, intuition, and flexibility are keys to successful court operations today.

Myth 3. *I'm okay; it is them I need to worry about.* Motivating court employees starts with court leaders motivating themselves. If court leaders hate their job, it is likely everyone else will hate their jobs, too. If court leaders are stressed out, everyone else is also. Enthusiasm is contagious. It can start at the top with the attitude of court leaders; regrettably, it can end there too.

Myth 4. *Increased pay is all we need to keep the courthouse happy.* Money is important, but human motivation is more complex than a lack of salary. What motivates one person does not necessarily motivate another. Recently, the *New York Times* had a story about the salary situation for judges. The article described some of the anger and rage many New York judges feel about their predicament. For over a decade the New York judges have had neither raises nor cost-of-living adjustments. Situations like frozen pay can initially be an irritant, but if it happens for a decade there are real consequences economically for the employee. With rare exception, a lot of judges have historically had a difficult time with salary issues. Now the judges' misery has been visited upon the rest of the courthouse employees. Situations like the judges in New York face can create anger and resentment. The economy will someday get better, and courts then will face pent-up demand for wages. In the meantime, the wage issue is a present problem of morale. Court leaders need to continue to advocate for fair wages for everyone in the courthouse, but until that day they cannot in frustration say, "There is nothing we can do about the morale around here."

Myth 5. *People are good, honest, and will always perform to the best of their ability.* For the most part, that is true, but there are times in which people are human, fallible, and prone to mistakes. The effective court leader is not delusional. A demoralized judge, court manager, or line worker can infect the atmosphere. Effective court leaders need to know how best to change the behavior of those whose actions threaten to infect the institution.

An effective court leader can learn from Booker T. Washington, who said few things can help an individual more than to place responsibility on him and let him know that you trust him.

Supporting employee motivation is a process, not a task. It can be enjoyable, rewarding, and integral to the effectiveness of an organization. Leadership on the issue of morale is, however, not just about good intentions. Court leaders need to work with employees to ensure that their motivational concerns are considered.

A court is a dynamic organization. Problems, issues, and concerns will arise. Being an effective colleague is one way to enhance the performance of a court. For the troika within the courthouse, however, collegiality among all three is a challenge. An effective court leader can learn from Booker T. Washington, who said few things can help an individual more than to place responsibility on him and let him know that you trust him. Sustaining court collegiality means investing in trust, developing a mutual understanding, and building commitment and joint ownership. Trust is the ability to have honest communication no matter what. Communication between the troika is not always premised on the perception that judges want honest communication from court administration and line staff. Even between judges, there are court leaders who do not embrace honest communication.

Steven Covey in *The Speed of Trust* says, "Simply put, trust means confidence. The opposite of trust, distrust, is suspicion." In today's environment, no courthouse can survive if there is rampant suspicion. Trust means that there is a willingness to be vulnerable to the actions of others. Trust means confidence and faith that positive expectations will be met. Fundamentally, trust is a belief in the goodwill of the people with whom you work.

One of the most difficult problems facing organizations is what some commentators have termed "auditmania" (the urge to have some independent inspection, which in the extreme is a virus infecting our society). Auditmania exists, they argue, because we no longer trust people to act for anything but their own short-term interests. As trust tends to decline, the demand for accountability (auditmania) increases. The absence of trust can feed on itself, simply breeding more and more suspicion. Employees who function under stifling oversight perform sluggishly so trust continues to stagnate. Robert Shaw said that a high level of trust allows people to say what is on their mind and not feel that it will come back to hurt them. Trust in the workplace ensures that lines of communication are open and that no one is hiding information or wasting time trying to decide the political implications of his or her views.

Integrity is an important element of effective court leadership. Honoring your word is important. You either keep your word, or as soon as you know you cannot, say that you cannot keep your word to those who are counting on it and clean up any mess you have caused. That is what integrity is about. Actions must clearly match your expectations. Good court leaders ask, Do my behaviors model my beliefs?

Courthouse morale is not easy to change. Some courthouses have great morale, and others have room for improvement. There are steps to creating a fun and vibrant court workplace:

1. Understand yourself.
2. Ask questions and then take first steps. Are you satisfied with the level of motivation that exists in your court? If not, what could be changed? Can you identify barriers to motivating people within your court? What motivational activity could be done that has not been thought of before?
3. Consider writing a list of three to five things that motivate judges, court administration, and line staff.
4. Give up the notion that professionalism and the nature of the mission of the courthouse means being serious all of the time.
5. Encourage employees to leave work behind them at the end of the day.
6. Recognize the necessity of balance between individual contribution and group support. The goal is an open, honest, and healthy courthouse where judges and staff can be candid about their views and experiences and take greater responsibility for their actions.
7. “TGIM”—Thank God It’s Monday. Do what it takes to ensure that judges, court administration, and line staff look forward to coming to work.

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COURT SECURITY AND BUSINESS CONTINUITY IN LEAN BUDGET TIMES: A COLLABORATIVE SYSTEMS APPROACH*

Marcus W. Reinkensmeyer

Court Administrator, Judicial Branch of Arizona in Maricopa County

Many courts are challenged to maintain high levels of court security and business continuity plans with increasingly limited resources. Drawing on the experience of an urban court, the Judicial Branch of Arizona in Maricopa County (the superior court), a collaborative systems approach can help courts leverage available resources and reengineer essential security services.

Amid the continuing economic recession, court leaders are confronted with deep, multiyear funding cuts and difficult budget decisions regarding court security and business continuity planning. Cutbacks in court security budgets would seem unthinkable, given the generally enhanced awareness of security vulnerabilities and the growing number of security threats documented in some jurisdictions. Yet an informal review reveals budget pressures and potential security staff reductions in several state and local jurisdictions, with no prospects of recovery in the foreseeable future.¹

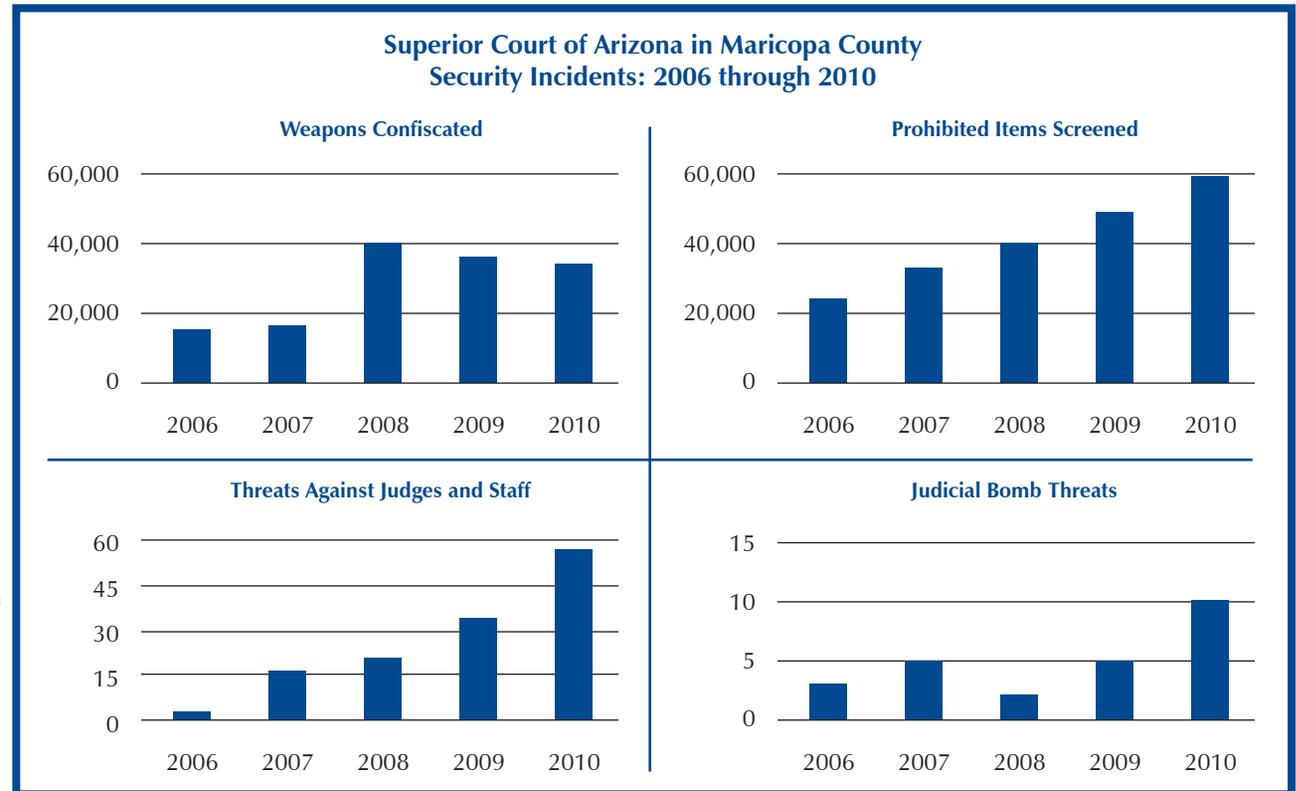
In written testimony submitted to the United States House of Representatives' Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, Chief Judge Robert M. Bell, in his capacity as president of the Conference of Chief Justices, stated:

Even though we do not have quantitative data, it is the perception of the state court leadership that the number and severity of these threats

and security incidents have been increasing in recent years. Furthermore, given that the state courts try approximately 96 million cases per year, the opportunities for incidents and the magnitude of the problem cannot be overstated. . . .

[M]ost local governments struggle to meet day-to-day operations of running their governments and have little options to improve or implement new security measures in courthouses. Because there is no adequate funding source, many courts report that they have no formal security plan (Bell, 2007: 4, 5).

Recognizing the many facets of court security and emergency preparedness, this article addresses strategies for court security process reengineering and business



continuity planning in trial courts. The 2006 report “A National Strategic Plan for Judicial Branch Security” is instructive in discussing the scope and definition of such planning, stating:

[I]nitial work on identifying guidelines and other resources focus first on physical and personal safety, a concern of all court security efforts. Subsequent efforts in more specialized court security areas, such as continuity of operations and cyber security, can draw from work already underway by other experts and groups concerned with these issues (Casey, 2006: 1, n. 4).

Budget Pressures in Maricopa County

In Maricopa County, Arizona, the superior court’s security department has undergone sizable budget reductions during a time of increased threats against the judicial branch and growing concern over the continuity of business operations. Last year, serving a population of 4 million residents, the superior court screened some 3.7 million court visitors and confiscated more than 34,000 weapons and 60,000 prohibited items in 53 court and probation buildings across the county. Although the number of people screened over the past five years has remained fairly constant, the court has witnessed a steady combined increase in the number of weapons and prohibited items confiscated, as well as a consistent increase in threats against judges/staff and bomb threats.

In Maricopa County, the superior court’s security department is responsible for building entry screening at all court/probation facilities. The sheriff’s department provides an armed presence at building entrances and transports inmates for the superior and justice courts.

Security and Business Continuity Planning: A Collaborative Systems Approach

The court administration literature advocates creation of standing court security and business continuity committees, development of comprehensive plans, periodic security audits, drills, and strong executive leadership (see Raftery, 2007; NACM 2006, 2005). Presiding judges and court managers serve in a critically important “convenor” role, bringing together limited- and general-jurisdiction courts, state and local stakeholders, and funding bodies. This collaborative systems approach



facilitates cross-court coordination (city, county, and state courts), while also leveraging city/county law-enforcement resources and expertise. Business-process-reengineering opportunities are identified, implemented, and evaluated within the planning framework.

In recent years, security and business continuity coordination in Maricopa County has evolved from an internal, annual-planning exercise to an ongoing, broad-based collaborative process. Central to this approach is the recognition of all involved stakeholders, in both the delivery and the receipt of court services, and a closely managed, continuous improvement process.

As the level of trust between court managers and stakeholders has grown, so too has the number of planning committees and workgroups. A decade ago, stakeholder involvement was limited to formal quarterly meetings of a security committee, an advisory body to the presiding judge. While this kind of meeting is still convened on an as-needed basis, the planning process has become far more inclusive and active with frequent interaction of stakeholders. A constellation of court-

convened, multiagency workgroups meets regularly to address operations plans for a new criminal courthouse, business continuity planning, technology, evacuation procedures, and supporting drills.

Collaborative Business Process Reengineering

The collaborative systems approach promotes joint identification of security vulnerabilities and organizational problems, including duplication and fragmentation of services. Jurisdictions adopting this approach may discover new opportunities for organizational restructuring, business process reengineering, and interbranch emergency preparedness planning. Some joint reengineering efforts may yield substantial budget savings, while other initiatives stand to enhance public safety at current resource levels.

The courts and justice agencies in Maricopa County have transitioned to this collaborative systems approach, largely out of necessity, given rapid growth in county population and pressing demands for service. Through this approach, the superior court has managed to maintain essential security functions and to enhance business continuity planning amid budget cutbacks. In large part, this has been achieved through the strong support of the court's primary funding body (the Maricopa County Board of Supervisors) and partnerships with other system stakeholders. Some proposed ventures have proven unworkable, including the outsourcing of security services, a proposed court security user fee, and a centralized entrance for the entire downtown court complex. Discussions with stakeholders have proven invaluable in vetting these options and averting costly missteps.

Collectively, the following joint initiatives have coalesced to reduce operational costs and strengthen the superior court's security and business continuity program during a protracted period of fiscal stress.

The collaborative systems approach facilitates cross-court coordination (city, county, and state courts), while also leveraging city/county law-enforcement resources and expertise.

Consolidation of Limited- and General-Jurisdiction Security Functions

Several years ago, the court merged two separate security departments serving the justice and superior courts, reaping economies of scale in management staffing and greater consistency in governing policies. These consolidation efforts have proven particularly cost-effective when staffing new, colocated regional court centers serving both levels of court (limited jurisdiction and general jurisdiction/trial) and adult and juvenile probation services. The resulting staffing efficiency was twofold. First, colocation of courts required deployment of fewer security officers to a centralized location than would have been needed for several outlying areas. Second, colocation resulted in an on-site presence of armed sheriff's deputies at the centralized location, thereby providing elevated security, which would not have been possible at dispersed locations.

From time to time, through intergovernmental agreements (IGAs), the superior court has provided centralized security staffing for some of the municipal courts located in Maricopa County on a contractual fee-for-service basis.²

Consolidation of Court Security and Business Continuity Planning

In recent years, the overlap of court security and business continuity planning has become readily apparent to all involved. With the merger of these two planning functions in the superior court's security department, coordination with first responders has been improved and staff time associated with duplicative committees has been virtually eliminated. The resulting security and business continuity plans and communications with court staff are also more coherent than those separately administered in the past. The superior court's security department is working closely with the Supreme Court of Arizona's Administrative Office of the Courts to develop coordinated business continuity plans, including preparedness for pandemic flu.

Sister Court Program

Through monthly meetings of the superior court's presiding judge and municipal court presiding judges/administrators, some limited-jurisdiction courts have agreed to temporarily house court operations for neighboring courts in the event of an extended building closure. With these arrangements in place, the courts ensure continuity of business operations in the event of a disaster (e.g., flood, fire,

or building systems shutdown) or a major security breach. For example, when the Surprise Municipal Court was closed down due to the presence of a suspicious white powdery substance, court operations were temporarily moved to the superior court's nearby Northwest Regional Court facility.

System Assessments Conducted by “Outside” Experts

The superior court has brought in the U.S. Marshal's Service and the National Center for State Courts to perform security assessments on large facilities, including regional sites. As a result, court policies and the roles of the various security personnel have been clarified and strengthened, and audit checklists have been completed for the buildings. These measures have, in turn, improved staff utilization and increased efficiency.

Identified in the system assessment plans were deficiencies in building facilities, security systems, and supporting infrastructure. Working with county management, the superior court has embarked on a series of recommended facility repairs and system upgrades. A recent example involved the installation of electronic card readers and video/intercom phones (air-phones) in older court buildings, much needed enhancements costing approximately \$80,000. The current budget crisis notwithstanding, these small-to-mid-sized projects fit well into the county's capital improvement plan, which allocates substantial one-time outlays for facilities.

Court security assessments in various states have recognized that as courthouses become more secure, assailants move their attacks away from the courtroom to less secure locations. The assessments now consider security and travel to judge/staff parking areas, setback areas adjacent to court facilities, bollards, and building perimeters. The superior court is considering screening judges' cars in the underground parking garage of a new criminal tower scheduled to open in 2012.³

Partnering with Law Enforcement to Leverage Federal Funds

Maricopa County secured \$250,000 in Homeland Defense grant funding through a joint project with the sheriff's office to acquire a high-speed gate/metal plate for an underground entrance to one of the older court buildings. Other joint applications for federal funding are being sought through McJustice, a countywide justice-planning consortium currently led by the superior court's presiding judge.

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Closure of Doors and Single-Point-of-Entry Screening

Through a process of continuous review and redesign of the Central Courthouse main lobby to add additional screening stations, the Maricopa County courts have now closed secondary entry doors (mainly doors apart from the main building entrances and judges/staff entrances) to most of its 53 buildings. Collectively, these closures and redesigned circulation patterns have saved over \$700,000 annually in staff (14 positions eliminated) and in screening-equipment maintenance. Such cost savings, as well as the conversion of full-time positions to part-time positions, help court administration to balance the security budget, concurrently allowing the court to redeploy existing staff to locations requiring additional coverage (e.g., locations with a single security officer and no back-up coverage) or to a high-volume screening station plagued by long lines of waiting court visitors.⁴

Programming and Design of New Court Facilities

States and counties fortunate enough to build or enhance court facilities during the economic downturn are making transformational security improvements. In Maricopa County, judges and court management staff are actively involved in the development of the court's ten-year master space plan, decisions on new courthouse/office locations, and security programming. Scheduled to open for operations in February 2012, the superior court's new criminal court tower will have 50-foot security setbacks where feasible; separate circulation patterns for the public, judges, staff, jurors, victims, and inmates; negative-air-pressure rooms; an off-site mail-screening station; a new centralized control room supporting all court locations; and extensive use of advanced technologies, e.g., video monitoring, motion detectors, high-capacity inmate-transportation elevators, and victim-waiting areas with video viewing of court proceedings.

Court Security Awareness and Training

Court security training is also enriched by cross-agency initiatives, sharing of staff expertise, and joint procedures development. The superior court has enlisted representatives of the U.S. Marshal's Service and the sheriff's office to provide educational programs for judges, court staff, and security personnel. Conversely, the court's security personnel serve as faculty for statewide security training and other cross-agency initiatives. This type of collaboration is also extended to "table top" exercises for business continuity planning and debriefing of bomb threats/building evacuations, with the immediate incorporation of "lessons learned" in training curricula.⁵

Security Networks

The Supreme Court of Arizona has created a statewide security network to improve security incident reporting. In addition, the superior court participates in security partnerships with local law enforcement, county and city officials, and the sheriff's office security department. The group plans to include other state officials, as well as community representatives from large businesses (the Downtown Phoenix Partnership).⁶

Conclusion

In the court security and business continuity arenas, the collaborative systems approach provides a practical way to leverage all available resources of sister courts, law-enforcement entities, and court stakeholders. This approach fosters a sense of shared responsibility for critical security functions, mainly through ongoing dialogue and joint business-process-reengineering ventures. Should court security budget cutbacks occur, the court's downsized security program can be closely coordinated with local law enforcement and first-responder services. The collaborative systems approach also helps to ensure that court security managers are fully briefed on the critical court security functions of partner agencies and their respective business continuity plans. This collaborative systems approach stands to bolster court security and public safety, particularly in lean budget times.

ENDNOTES

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¹ Court security reduction information was obtained from a variety of sources, including conversations with court administrators, security directors, press releases, and court security articles. See Lavoie, 2010; Yellen, 2010; Camp, 2010; Dinan, 2010; Epstein, 2010; Messina, 2010; King County Executive News, 2010; Widgerson, 2010.

² Here are some more examples. The State of New Hampshire Judicial Branch is considering the transfer of the state-county hybrid staffing and funding of court security to the county sheriff's department (2010-2011 New Hampshire State Court Budget document). Cities within the State of New York are converting from contractual court security services to New York State Court officers (2010-2011 New York State Security Budget document). The New York Judicial Branch is assessing contractual security agreements with local municipalities to ensure all of the public's safety and security needs are met. Where and when appropriate, local court security arrangements will be replaced with unified court system, state-paid court security officers (2010-2011 New York State Security Budget request).

³ Colorado state courts are extending court security procedures to court parking lots and to judges' homes (Schoen and Mickish, 2005). Texas HB 1380 provides that courthouse security funds may be used to provide security for associate judges (State of Texas Legislature H.B. 1380); the State of Minnesota includes the court parking lots as part of the court security perimeter (State of Minnesota Court Security Manual, 2008).

⁴ Colorado state courts have extensively reorganized court security staff to create the most effective court security system their budget can afford and have focused on limiting building access to a single guarded security-station entrance (Schoen and Mickish, 2005). The California Court System secured 2008 funding for new security entrance stations for trial courts statewide and consolidated entrances into one main entrance (California Administrative of the Office of the Courts 2007-2008 budget).

⁵ Here are some examples of court security training in other states. Maine State Courts have focused on (1) defusing of tense situations and (2) how to handle a situation where a weapon is detected through security screening (Saufley, 2010). Illinois state courts train court security staff on crowd control, rapid deployment, evacuations, and a variety of "use-of-force" options, such as firearms, less-lethal weapons, Tasers, OC foam, and batons (Orphan, 2010). Pennsylvania court security staff received training in personal security and court safety, focusing on how to effectively deal with verbally and physically disruptive litigants (Administrative Office of the Pennsylvania Courts, 2007). New York State's Court Officer Training Academy provides a 14-week training program to all New

York State court-officer candidates, which has been maintained in the New York state court's 2010-2011 budget. Colorado state court security staff have received more security and workplace-violence training (Schoen and Mickish, 2005).

⁶ A number of courts have established internal emergency management Web sites to improve communication. The Michigan State Court Security Division launched its first trial court security and emergency management Web site on the Michigan Court Application Portal (2009-2010 Michigan State Court Budget document).

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IMPROVING COURT ACCESS: SPECIAL PROGRAMS

“The role of the judiciary has evolved substantially over the years, from simply deciding cases to helping, in many instances, to address the underlying problems, and alleviate the impacts of those problems.”

Chief Justice Mark E. Recktenwald of Hawaii, State of the Judiciary 2011

COURTS AND UNIVERSITIES PARTNER TO IMPROVE ACCESS TO JUSTICE FOR ALL CALIFORNIANS

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The California JusticeCorps Program is a unique partnership between trial courts and academic institutions that leverages national service initiatives, such as AmeriCorps, to expand court resources, improve service to self-represented litigants, and provide a unique learning opportunity for future legal professionals.

More than 4 million people come to court each year in California without an attorney to represent them, typically because they cannot afford one. Navigating a court system is no simple task. Legal matters involving family, housing, and financial stability usually require multiple steps to reach full resolution, including filling out several pages of forms, serving official notice on other parties, participating in mediation, and sometimes appearing in the courtroom before a judge or a commissioner. In a trend that can reasonably be attributed to the current economic downturn and the strain it is placing on household incomes, local courts are reporting that self-represented litigants' legal matters are also growing in complexity. As evidence of this, more people are being seen in our court-based self-help centers with legal matters that involve property division, including partition of homes, businesses, pension plans, and stock options.¹

In addition to the legal complexities they face, emotions and anxieties run high among litigants going through difficult personal situations, making the court environment even more stressful and intimidating. Add language barriers or limited education to the mix, and the challenges only intensify. These challenging dynamics place additional burdens on cash-strapped courts trying to meet increased public

needs with fewer resources. As California's trial courts have struggled to cope during a multiyear period of fiscal austerity, creative solutions to process these often unexpectedly complex cases have become imperative. One such creative response is the JusticeCorps Program.

In 2004, as self-help legal-access centers in courts across California were actively expanding their services and establishing themselves as a resource to the community, the resultant long lines of those in need grew markedly. In response, the JusticeCorps Program began in that year with the support of an AmeriCorps grant. AmeriCorps is a national service initiative administered by the federal Corporation for National and Community Service (CNCS). It was created in the 1990s under the Clinton administration and designed to address specific pressing community problems by providing direct service to people in need. AmeriCorps is often referred to as a domestic Peace Corps. The AmeriCorps structure forms the foundation of the JusticeCorps Program's design. JusticeCorps is one of the only national service programs focused on providing legal assistance in a court-based setting.

Typically, AmeriCorps programs are coordinated and hosted by grass-roots community-based organizations, such as child-abuse-prevention programs, homeless-support-services providers, and youth-mentoring organizations. For a government agency to act as a service site is unusual. But given that the issues handled every day in the California courts' self-help centers are vital to maintaining healthy families and strong communities, and that the nature of the work is so hands on, it was clear the service had the potential to be anything but bureaucratic.

During the program's development, the AOC and its partner courts looked to a growing source of assistance in meeting these needs—our local public universities—to create a trial court/public university AmeriCorps partnership: the California JusticeCorps Program. JusticeCorps members are undergraduates recruited from local public universities to serve in our courts' self-help legal-



**The California
JusticeCorps Program
is a trial court/public
university/AmeriCorps
partnership**

access centers by providing assistance to self-represented litigants in navigating the court system to resolve their civil legal matters. Specifically, JusticeCorps members provide three key types of service: (1) offering litigants information about options and referrals to appropriate services within or outside the courts; (2) assisting with identifying and completing legal forms and procedures, individually or in workshops; and (3) observing in the courtroom and providing litigants with information after courtroom sessions. The students are enrolled at the partner universities, are not attorneys, and have a variety of majors (including pre-law.) All assistance provided by JusticeCorps members is under the supervision of staff at the self-help centers where members serve.

JusticeCorps members provide three key types of service:		
Offering litigants information about options and referrals to appropriate services within or outside the courts	Assisting with identifying and completing legal forms and procedures, individually or in workshops	Observing in the courtroom and providing litigants with information after courtroom sessions

Increasing Court Access and Efficiency

A creative partnership between the California Administrative Office of the Courts and local courts in nine counties (three new locations were added in 2010), JusticeCorps aligns closely with the Judicial Council of California’s strategic goal of equal access. The benefits of the program to the California courts are manifold. JusticeCorps has increased the capacity of the self-help centers to serve more self-represented litigants more thoroughly. The program allows self-help center attorneys the luxury of having time to strategize and to focus their skills on the most critical needs. One JusticeCorps site supervisor (an attorney who oversees JusticeCorps members) explained that from her perspective the assistance of JusticeCorps members turned her into a much more effective multitasker, “an octopus with eight arms,” as she put it. Data collected through internal progress reporting and a formal outside evaluation quantifies the program’s impact. In 2009, JusticeCorps members served more than 47,000 hours in self-help centers across six California counties. They assisted 60,000 litigants, provided 24,942 appropriate referrals, and helped to complete 38,900 legal forms. This work meant

that paperwork filed with the clerk’s office was accurate, thus eliminating delays or repeat trips to court for the parties because of procedural problems or errors on forms.

In addition, several site supervisors and administrators described how having the JusticeCorps program has contributed to a positive work environment in their court. JusticeCorps members are visible due to the blue JusticeCorps shirts they are required to wear, and judges and attorneys often go out of their way to encourage and interact with them. At one court, court clerks were given the responsibility of orienting and providing some initial training to new JusticeCorps members, which one administrator noted has led to increased professionalism among their own clerks. Administrators also described the positive energy present with each new cohort of young, intelligent, and enthusiastic workers. As one court administrator put it, “[T]here’s an energy that these kids bring that they have that really is infectious—this is not a happy place most of the time—and that energy and that enthusiasm and that spirit really sort of infuses itself into the people who work here.”

Two years into the program, a clerk who sees self-represented litigants every day noted what a difference the program has made in how litigants may perceive the entire court atmosphere: “[T]he first thing I notice right away, especially on Friday, was how calm it was. Before JusticeCorps, I used to feel sorry for all the people that worked in the [the center] especially on Friday afternoons, [the customers have] been sitting here all afternoon. They’re waiting to be seen and they can’t be seen, so they’re hostile. . . . That has dissipated. It just went away.”

In the 2009-10 program year, 284 California JusticeCorps members:
<ul style="list-style-type: none"> • Served more than 47,000 hours in six counties • Assisted 60,000 litigants • Provided 24,942 referrals • Helped to complete 38,900 forms

The added value of the work being produced by the self-help center with the assistance of JusticeCorps volunteers was supported by judicial officers who noticed improvements in the quality of both the hearings and the final orders being issued. One judge remarked that “the product that the public went out with was so much better. . . . They actually were getting

a quality judgment that they could rely on and they were walking out of here the way people who could afford representation could walk out of here. And what a joy that is to be able to give them something they could rely on.”

Another bench officer commented, “[W]hen you see somebody who had been through the self-help center, it makes a very different hearing, it makes a very different default process. It’s all different because the work is better.”

Quantifiable Impacts

An independent evaluation conducted in 2009 confirmed the benefits to litigants that previously had only been demonstrated anecdotally. Surveys and focus group research showed that 68 percent of assistance provided by JusticeCorps members was provided in a language other than English.² This multilingual service was made possible by the program’s successful recruitment of diverse student volunteers. The California State University (CSU) system—with 23 campuses, 8 of which currently participate in the JusticeCorps Program—has a student body made up of 65 percent minority ethnicities. The overall student body of the 10-campus University of California (UC) system, 4 of which are JusticeCorps partners, is composed of 67 percent minority ethnicities.³ On average, each year’s class of JusticeCorps members speaks 24 different languages either fluently or conversationally. These students linguistically and culturally represent the people they serve in our courts. Evaluators reported that they witnessed litigants who came back to court a second time asking for the particular JusticeCorps member who assisted them earlier because they felt comfortable with that person. Overall, the evaluation showed that that litigants were “extremely satisfied” with the help they received and felt “less stress and uncertainty” as they navigated the court system. A full 97 percent of litigants surveyed reported feeling better prepared to proceed with their case as a result of JusticeCorps members’ assistance.

Equally gratifying is the program’s benefit for the students who participate. To date, the program has nearly 1,000 alumni. Of those who responded to surveys about what they are doing after JusticeCorps, 77 percent indicated they have either applied for, are attending, or have completed law school. According to one program alum now attending Yale Law School, “Serving in the courts showed me that the law was not some abstract concept but a living, breathing system that impacts people

Evaluators reported that they witnessed litigants who came back to court a second time asking for the particular JusticeCorps member who assisted them earlier because they felt comfortable with that person.

every day. I have knowledge few of my peers share.” An alum now attending Loyola Law School said, “Whenever I feel overwhelmed in law school I just remember the people who I want to be able to help, the people who I have seen struggle. That is honestly what keeps me motivated to move forward.” Of those program alumni not choosing law school, most pursued other graduate-school opportunities, received prestigious fellowships, or started careers as social workers or in court administration.

Leveraging the National Service Program Model

Three key requirements of national service efforts under AmeriCorps are that people working in their communities be (1) well trained, (2) well supervised, and (3) well recognized for their contributions. With regard to training, as an AmeriCorps program JusticeCorps requires its members to perform 300 hours of service to the program; up to one-third of this service time is devoted to training and preparation. Indeed, after participating at the beginning of the academic year in a comprehensive, weekend-long orientation organized by the local court with support from the AOC, JusticeCorps members head to their respective self-help centers for small-group, on-the-job training in the specific areas of law covered at their centers (family, small claims, unlawful-detainer or eviction matters, guardianship, domestic violence, etc.). The initial training helps introduce members to the larger mission of the self-help centers and the importance of access to justice. The smaller, on-site training offers a more practical approach to procedures for specific case types. To round out the members’ skills, additional training is provided throughout the year—led by court staff, legal-aid professionals, university faculty, and nonprofit service providers—covering legal ethics, professionalism, time management, cultural sensitivity, disability awareness, and other related topics. With support from local court leadership, the staff compiled an impressive portfolio of



A California JusticeCorps Program member helps a litigant to identify the appropriate form for a family-law matter.

training resources used each year to ensure the quality of justice provided to the public while broadening the members' skills.

Along with the training regimen that prepares JusticeCorps members for their service in the courts, their work is always supervised by designated court staff. Proper supervision is necessary not only to protect the court from any inappropriate interaction with litigants and to ensure that the work product is accurate, but also to ensure that, per key AmeriCorps requirements, the members feel supported in their efforts. Year after year, participating members report back that they were nervous, anxious, and unsure during the first few weeks of service. Feedback provided shows that the more readily available their supervisor's assistance, the more the JusticeCorps members learned, the more skilled they became at providing information to litigants, and the more likely they were to complete their full 300-hour commitment.

In terms of the third key requirement, recognition, like all AmeriCorps national service initiatives, JusticeCorps members who complete the required 300 hours

in one academic year receive a \$1,132 education award that can be applied toward any school expense. Their participation in the program also provides many opportunities for special experiences and recognition, beginning with a courtroom "swearing-in ceremony" led by the court's presiding judge or featuring other prominent keynote speakers. Members are encouraged to bring family and friends to share in the significance of the commitment being recognized. After a semester of service, members in good standing are offered a much coveted afternoon with a judge, including courtroom observation and time for casual conversation in chambers. Another favorite spring training event, called Life After JusticeCorps, offers members a chance to hear from a panel of professionals—including prosecutors, public defenders, court interpreters, legal-aid attorneys, and court executives—who explain their education and career choices, offer advice, and answer questions. The event also includes résumé-writing workshops and tips from law-school-admissions staff.

Maximizing these three key AmeriCorps program elements has strengthened JusticeCorps and taken it far beyond the typical volunteer or internship program. But it is the steady supply of enthusiastic, capable, committed recruits that is perhaps the program's biggest asset, one that can provide dividends to the courts by familiarizing young people with the work of the courts beyond the courtroom. JusticeCorps members attending the partner universities come to the program with a deep desire to learn and for that learning to be relevant. Beyond classroom time, community service has become an increasing part of the academic experience at both the CSU and the UC campuses. Across the CSU system nearly 65,000 service opportunities are offered to students each year; at the UCs, 58 percent of students report they have participated in community service in the last academic year.⁴ This focus on service is prevalent nationwide.⁵ These campuses have had a longstanding commitment to serve the economic, public-policy, and social needs of our state. But until JusticeCorps, the courts in California had not leveraged that commitment. With the JusticeCorps program, the courts have a direct connection to a diverse, enthusiastic, and focused group of future leaders.

The value of the judicial branch's partnership with local universities, as showcased through the JusticeCorps experience, cannot be overstated, whether viewed from the perspective of the court, the litigant, or the students participating. Highlighted

as one of the most innovative AmeriCorps programs in the United States (America's Service Commissions and Innovations in Civic Participation, 2010), the California JusticeCorps Program has also brought something of value to the national-service arena: long-overdue attention to the pressing community need for civil legal assistance. As the California Administrative Office of the Courts continues to expand the program to new locations in the state and beyond, we look forward to furthering the conversation about how courts and universities can form additional partnerships to meet critical needs and enhance access to justice.

"[T]here's an energy that these kids bring that they have that really is infectious—this is not a happy place most of the time—and that energy and that enthusiasm and that spirit really sort of infuses itself into the people who work here."

- Court Administrator

ENDNOTES

¹ California court self-help centers are staffed by attorneys and other qualified personnel who provide information and education to self-represented litigants in primarily family, unlawful-detainer, and small-claims areas of law. Effective January 1, 2008, the Judicial Council of California adopted a rule of court, which provides that court-based self-help centers are a core function of the California courts (Cal. Rules of Court, rule 10.960(b), 2008).

² Nearly 40 percent of Californians speak a language other than English at home (quickfacts.census.gov/qfd/states/06000.html). According to the California Administrative Office of the Courts Web site, more than 200 languages are spoken in California (www.courtinfo.ca.gov/programs/courtinterpreters/becoming-faq.htm#demand).

³ See CSU Enrollment by Ethnic Group, Fall 2009 Profile (www.calstate.edu/as/stat_reports/2009-2010/feth01.htm), and The University of California Undergraduate Experience Survey (www.universityofcalifornia.edu/studentsurvey/charts/demographics.html).

⁴ UC Undergraduate Experience Survey, Civic Engagement Module 2008 (www.universityofcalifornia.edu/studentsurvey/charts/civic.html).

⁵ Campus Compact, for example, is a national coalition of more than 1,100 campuses committed to fulfilling the civic purposes of higher education.

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EMERGING STRATEGIES IN FORECLOSURE MEDIATION*

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The nation's foreclosure crisis requires innovative solutions that protect the rights of the homeowner while relieving stress on overburdened court dockets. Well-structured foreclosure mediation programs can ably serve both purposes.

Federal, state, and local law and policy makers have initiated a broad array of interventions to the foreclosure pandemic, including loan modification programs such as the federal Home Affordable Modification Program (HAMP), mortgage-payment-assistance and principal-reduction programs, counseling assistance, funds to promote neighborhood stabilization, and regulatory reform. One vehicle that can usefully coordinate a number of these foreclosure mitigation tools is foreclosure mediation. Jurisdictions around the country are increasingly offering mediation programs as an opportunity for lenders and homeowners to reach mutually agreeable and beneficial alternatives to foreclosure.¹ Mediation programs have the

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- Counseling assistance
- Funds to promote neighborhood stabilization
- Regulatory reform

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potential to decrease the number of defaults resulting in foreclosure, increase the likelihood that mortgage terms can be renegotiated, and facilitate “graceful exits” by negotiating short sales, deeds-in-lieu-of foreclosure (where the homeowner deeds the home to the lender in exchange for a release of liabilities under the mortgage), or other alternatives for homeowners who are unable to keep their homes.

More than 30 foreclosure mediation programs have been created in at least 20 states and the District of Columbia. Although many programs are still finding their footing, outcomes from several established programs are impressive, with some boasting 70 to 75 percent settlement rates with approximately 60 percent of homeowners reaching settlements that allow them to remain in their homes (see Cohen and Jakobovics, 2010).

This article describes several program features that appear to have a positive impact on the effectiveness of mediation programs and offers those features for consideration by jurisdictions that are seeking to develop or expand programs. The article also includes a list of existing foreclosure mediation programs throughout the nation that are interested in sharing their experiences with mediation program stakeholders in other jurisdictions.

Program Administration and Design

A defining feature of mediation programs is the presence of neutral third-party mediators who can help parties reach agreement on an alternative to foreclosure where such an outcome is feasible. The third party does not have to be present at every stage of mediation. For example, the foreclosure mediation program in Philadelphia relies on premediation “conciliation conferences,” where the parties are required to meet to discuss foreclosure alternatives. A mediation session with a third-party mediator is required only where the parties are unable to reach an agreement at the conciliation meeting. Further, foreclosure cases come before a judge only if formal mediation fails to resolve the matter. These conferences and mediation sessions ensure that judges are being called upon to address only the toughest cases and, thus, are an effective way to decrease the mediation program’s burden on court officers.

Mediation Program List

This list includes a least one program in every state that has established a foreclosure mediation program that uses a neutral third party to oversee at least some aspect of the mediation process. This list is not meant to be comprehensive and does not constitute an endorsement by the U.S. Department of Justice.

State	Program
Connecticut	State of Connecticut Judicial Branch Foreclosure Mediation Program www.jud.ct.gov/foreclosure
Delaware	Delaware Residential Foreclosure Mediation Program http://deforeclosurehelp.org/mediation.html
District of Columbia	Foreclosure Mediation Program for D.C. Homeowners http://oag.dc.gov/DC/OAG/Services+for+the+Community/Consumer+Protection+and+Antitrust/Foreclosure:+Important+Information
Florida	Florida Statewide Managed Mediation Program www.floridasupremecourt.org/pub_info/documents/AOSC09-54_Foreclosures.pdf
Hawaii*	Third Circuit Court Foreclosure Mediation Pilot Project www.courts.state.hi.us/docs/form/hawaii/foreclosure_mediation_notice.pdf
Illinois	Circuit Court of Cook County Mortgage Foreclosure Mediation Program http://cookcountyforeclosurehelp.org
Indiana	Indiana Foreclosure Settlement Conference Program www.in.gov/judiciary/home/#how
Kentucky	Jefferson County Foreclosure Conciliation Project www.louisvilleky.gov/Housing/News/2009
Maine	Maine Foreclosure Diversion Program www.courts.state.me.us/court_info/fdp
Maryland*	Maryland Foreclosure Mediation Program www.mdhope.org/ForeclosureMediation.aspx
Nevada*	Nevada Foreclosure Mediation Program www.nevadajudiciary.us/index.php/foreclosuremediation
New Hampshire*	New Hampshire Judicial Branch Office of Mediation and Arbitration Foreclosure Mediation Program www.courts.state.nh.us/adrp/foreclosure
New Jersey	New Jersey Judiciary Foreclosure Mediation Program www.nj.gov/foreclosuremediation
New Mexico	First Judicial District Court Foreclosure Mediation Program www.firstdistrictcourt.com/Forms/doc/Foreclosure%201.doc
New York	New York City Mandatory Settlement Conference in Residential Foreclosure Actions www.banking.state.ny.us/hetpinf6.htm
Ohio	Cuyahoga County Foreclosure Prevention Program http://cp.cuyahogacounty.us/internet/ForeClosureMediation.aspx
Pennsylvania	Philadelphia Residential Mortgage Foreclosure Diversion Program www.courts.phila.gov/mfdp
Rhode Island*	Providence Conciliation Conference Program http://library.municode.com/ordinances/11458/Chapter%20No.%202010-2.pdf
Vermont	Vermont Foreclosure Mediation Program www.uvm.edu/consumer/?Page=foreclosure.html
Wisconsin	Milwaukee Foreclosure Mediation Program http://law.marquette.edu/foreclosure

* State has a nonjudicial foreclosure process.

Although many programs rely on sitting judges to oversee mediation sessions, this is by no means uniformly true. New York City’s foreclosure mediation program and others rely on court-supervised “referees”—typically retired judges and lawyers—to supervise mediation. Several jurisdictions have contracted with nonprofit organizations, such as the Center for Conflict Resolution in Illinois and the Collins Center for Public Policy in Florida, to administer mediation programs. The Milwaukee Foreclosure Mediation Program is run by Marquette University Law School, where a full-time chief mediator oversees a roster of trained volunteer attorney-mediators.

Judicial foreclosure states are also not the only forums in which mediation programs have been established.² The state of Nevada, a nonjudicial foreclosure state, requires lenders to participate in mediation before a foreclosure can proceed. Providence, Rhode Island imposes a fine on servicers that proceed to foreclosure without attempting mediation, while New Hampshire’s foreclosure mediation program relies on the voluntary participation of lenders.

Mediation programs can also be used as an intervention tool before the lender files a foreclosure notice, when homeowners may be in the best position to rectify arrears and when servicers can potentially avoid the significant costs of initiating the foreclosure process. Fannie Mae has recently announced a policy that requires servicers to determine whether delinquent mortgage loans secured by properties in Florida are eligible for mediation before initiating foreclosure proceedings and, if they are eligible, to proceed in accordance with Fannie Mae’s policy guidance on pre-filing mediation.

Automatically Scheduled vs. Opt-in Process for Homeowners

Mediation programs generally follow one of two models for homeowner participation: an opt-in process, where the homeowner is notified of his or her eligibility but must affirmatively request mediation; or an automatically scheduled, or opt-out, process, where homeowners who receive a notice that foreclosure has begun are automatically scheduled for a mediation session. Participation rates appear to be considerably higher in jurisdictions that have automatically scheduled programs, generally 70 percent and higher in jurisdictions such as Connecticut and New York, compared to opt-in

Mediation programs can also be used as an intervention tool before the lender files a foreclosure notice, when homeowners may be in the best position to rectify arrears and when servicers can potentially avoid the significant costs of initiating the foreclosure process.

programs, which typically have participation rates for eligible homeowners below 25 percent. Notably, Connecticut's program, the nation's first statewide foreclosure mediation program, was originally opt-in and did not see a drop in settlement rates when the program switched to an automatically scheduled process, despite an increase in the number of homeowners participating in the program. An important question for any jurisdiction that is contemplating an opt-in versus an automatically scheduled program is whether the program has the capacity to accommodate the higher volume of homeowners who will likely be brought into the program through automatic scheduling.

Stakeholder Involvement

Stakeholder involvement is a major factor in the success of mediation programs. In several jurisdictions, the courts, legislatures, lenders, and homeowner advocates have come to the table at an early stage to devise meaningful interventions for foreclosure mediation programs. By working together, all parties can voice their concerns and help craft a process that is both efficient and fair and not unduly burdensome to any party. To the extent possible, the involvement of all parties, including representatives from the lending community, during the planning stages increases the likelihood that parties will be receptive and active participants once the program gets off the ground.

Access to Counselors

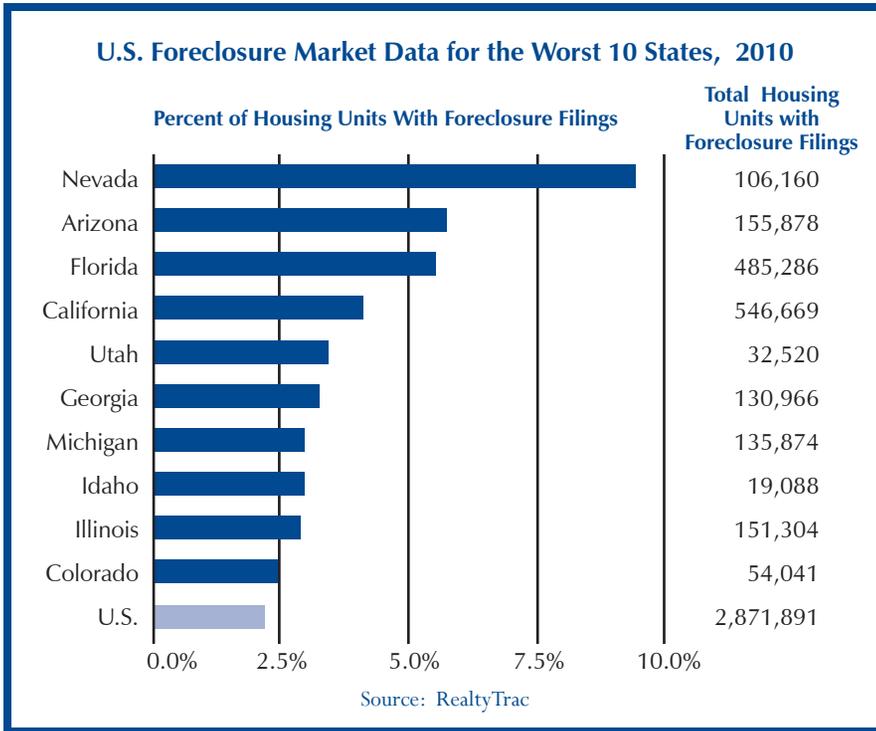
There is broad consensus that homeowners fare better in mediation when assisted by a knowledgeable housing counselor, a lawyer, or both. These advocates can also help the process run more smoothly by helping gather loan documents, identifying loan modification options, and facilitating communication among the

homeowner, mediator, and counsel for the lender. Almost all mediation programs provide homeowners with notice of the availability of free housing counselors, and sometimes legal assistance, or otherwise require the lender to do so. A smaller number of programs, including those in Cook County, Illinois, Philadelphia, and New Jersey, go further by coordinating or requiring counseling assistance before or at mediation sessions. Some programs also have established or facilitated relationships among counseling agencies, legal-aid providers, and pro bono attorneys.

For example, the Circuit Court of Cook County's Mortgage Foreclosure Mediation Program requires a homeowner who is seeking mediation to meet with a HUD-certified housing counselor (either with an on-site counselor directly through the program or with another HUD-certified housing counselor of his or her choosing) and with an attorney in advance of mediation. The program provides housing-counseling services and legal services at no cost to any homeowner who needs the assistance and meets the eligibility requirements, regardless of income. The housing counselor helps the homeowner obtain necessary paperwork and make an assessment of the best option for the homeowner (modification, short sale, etc.). The homeowner also has a consultation session with a pro bono attorney who reviews the paperwork to make an initial determination of whether the homeowner has a legal defense to foreclosure that should be pursued through the courts. Where appropriate, the attorney will help the homeowner prepare a request to the court

for appointment of pro bono counsel. If there is no defense to the foreclosure, and the case proceeds to mediation, the homeowner will have the assistance of a pro bono attorney throughout the mediation process. At least anecdotally,





foreclosure mediation programs, such as Cook County's, that coordinate counselor and attorney resources have improved access to qualified housing counselors and legal assistance for homeowners facing foreclosure.

Training and Support

To be successful, mediation programs must ensure that participants helping to facilitate the mediation process are well trained. The housing-counseling agencies that participate in many programs have extensive in-house training both on available resources and programs at the federal and state level, including state and federal mortgage assistance programs and community-based resources, as well as on the details and functioning of the mediation program itself.

Well-trained lawyers are also an important tool in mediation programs, as there may be homeowners for whom mediation reveals a legal issue that requires the

assistance of an attorney. Although legal resources for homeowners in mediation programs generally are quite limited, many programs do enjoy the participation of legal-aid offices and pro bono attorneys coordinated by a local bar association or other organization. However, these attorneys may be hamstrung by a lack of familiarity with the complex legal issues that arise in foreclosures. Legal-aid offices and other organizations that closely supervise and train volunteer attorneys, thus, can play a vital role in increasing program effectiveness.

Integration with Federal and State Foreclosure Relief Programs

The Obama administration's foreclosure relief programs, including HAMP, the Hardest Hit Fund, principal reduction programs, FHA loss mitigation options, and the Home Affordable Foreclosure Alternatives (HAFA) programs, as well as state relief programs, have increased the options available to homeowners at risk of foreclosure. Mediation programs that take advantage of or help facilitate homeowners' access to these programs, either through the assistance of knowledgeable mediators or counselors, or with other program requirements, will in all likelihood achieve greater success than programs that do not.

The Dodd-Frank Wall Street Reform and Consumer Protection Act also offers protections to homeowners that may be realized in a mediation program. For example, the act requires that every servicer participating in HAMP that denies a homeowner's loan modification request on the basis of net-present-value (NPV) analysis provide that homeowner with the data used to make its calculation. A foreclosure mediation program is a proper venue in which a lender may provide the information to a homeowner, and well-structured programs should provide a space for that transaction to occur.

Several mediation programs have been working to educate program administrators about HAMP and other federal and state foreclosure prevention programs and have instituted oversight measures to help increase the number of homeowners who can secure foreclosure relief through these programs. Connecticut's foreclosure mediation program retains all mediation cases in which a homeowner has received a temporary HAMP modification until a permanent HAMP modification is obtained. Vermont is the first mediation program to require lenders, as part of the mediation process, both to calculate the NPV in accordance with HAMP guidelines and

actually to produce the NPV inputs and outcome to the homeowner and mediator. If the lender fails to comply with the mediation statute, the court is empowered to impose sanctions, including prohibiting the lender from scheduling or conducting a foreclosure sale.

Documentation Requirements

Most foreclosure mediation programs require homeowners to provide documentation of available resources and a budget plan. Some programs, like Maine's foreclosure mediation program, also require that homeowners and lenders provide information to complete the FDIC's publicly available NPV worksheet, which determines whether a loan modification is feasible, and that the lender or its representative participating in mediation have authority to agree to a proposed settlement. Although requiring documentation by the lender at the outset of mediation may prove to be an unnecessary obstacle to commencing the negotiation process, there may come a time during mediation where such documentation is necessary. Thus, facilitating or requiring the production of documents may be an important feature of the program.

Accountability Measures

Several jurisdictions have developed program rules that help ensure accountability by mediation program participants. For example, in some court-run mediation programs, such as Maine's, courts have the authority to assess costs and fees to either party for failure either to appear at mediation sessions or to make a good-faith effort to mediate. Providence's foreclosure mediation program allows mediators to request that lenders provide written documentation of reasons for rejecting a loan modification proposal. Vermont's foreclosure mediation program requires lenders to provide a copy of any pooling and servicing or similar agreement when a lender claims that such an agreement prohibits a loan modification.

Research and Evaluation

The way to determine whether a mediation program is actually effective is through careful tracking and evaluation of program data. At a minimum, participation and settlement rates should be tracked. A more comprehensive approach would include tracking not just the occurrence of a settlement, but also the substance of the agreement (e.g., loan modification, HAMP/non-HAMP, repayment/forbearance

The way to determine whether a mediation program is actually effective is through careful tracking and evaluation of program data.

plan and principal forbearance amount, cash for keys, short sale, and other agreements), the time period for achieving resolution (tracked in Cuyahoga County, Ohio), and whether homeowners had the assistance of a counselor or attorney (tracked in New York City).

The Philadelphia mediation program has also been tracking homeowner participant demographics to ensure that there are not unwarranted disparities in community participation rates. Several programs have been evaluated with private foundation support, but smaller programs, like that in Butler County, Pennsylvania, have been experimenting with low-cost ways to track at least some data.

Conclusion

For millions of homeowners at risk of foreclosure, mediation programs offer an opportunity to evaluate their options and appraise possible alternatives to losing their homes. Well-structured foreclosure mediation programs that are designed to take advantage of available resources at the local, state, and federal level can be valuable and even essential tools as jurisdictions around the country seek ways to combat the foreclosure crisis. The program features described in this article should be considered by states and localities as they study how to construct new programs or support existing ones.

ENDNOTES

* A version of this article was originally jointly published by the U.S. Department of Justice and U.S. Department of Housing and Urban Development in November 2010. Reprinted with permission. More information about the Access to Justice Initiative of the U.S. Department of Justice is available at www.justice.gov/atj.

¹ The term “lenders” is used in this article to refer collectively to lenders as well as servicers, who collect and process loan payments during the life of a loan on behalf of lenders.

² In judicial foreclosure states foreclosures are processed through the courts. In contrast, in nonjudicial foreclosure states lenders are permitted to proceed directly to a foreclosure sale without court action.

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ADULT GUARDIANSHIPS: A “BEST GUESS” NATIONAL ESTIMATE AND THE MOMENTUM FOR REFORM

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A projection of active pending adult-guardianship cases nationwide demonstrates the need for improved data collection. Retrospectively, 2010 may be remembered as a pivotal year in the call for guardianship reform at both federal and state levels.

Guardianship is a relationship created by state law in which a court gives one person or entity (the guardian) the duty and power to make personal or property decisions for another (the ward, or incapacitated person). While specific terminology varies from state to state, guardianships tend to be distinguished between guardianships of the person and guardianships of the estate (conservatorships).¹

Guardianships—a guardian is lawfully authorized to make decisions in place of an adult who is determined by the court to be incapable of caring for himself or herself.

Conservatorships—a conservator is authorized to make decisions regarding the real or personal property of an adult who is determined by the court to be incapable of making those decisions.

Guardianship Issues

Due to the seriousness of the loss of individual rights, guardianships are a “last resort.” The court can order either a full or limited guardianship for incapacitated persons. Under full guardianship, wards relinquish all rights to self-determination, and guardians have full authority over their wards’ personal and financial affairs: Wards lose all fundamental rights, including the right to manage their own finances, buy or sell property, make medical decisions for themselves, get married, vote in elections, and enter into contracts. For this reason, limited guardianships—in

“The appointment of a guardian or a conservator removes from a person a large part of what it means to be an adult: the ability to make decisions for oneself. . . . We terminate this fundamental and basic right with all the procedural rigor of processing a traffic ticket.”

*- Utah Judicial Council’s ad hoc Committee on Probate Law and Procedure
(February 2009)*

which the guardian’s powers and duties are limited so that wards retain some rights depending on their level of capacity—are preferred.

The guardianship process can vary significantly by state, court, and judge. Generally, the process begins with the determination of incapacity and the appointment of a guardian. Interested parties, such as family or public agencies, petition the court for appointment of guardians. The court is then responsible for ensuring that the alleged incapacitated person’s rights to due process are upheld, while making provisions for investigating and gauging the extent of incapacity, if any. Should the individual be deemed incapacitated, the judge appoints a guardian and writes an order describing the duration and scope of the guardian’s powers and duties. The court also holds the guardian accountable through monitoring and reporting procedures for the duration of the guardianship and can expand or reduce guardianship orders, remove guardians for failing to fulfill their responsibilities, and terminate guardianships and restore the rights of wards who have regained their capacity.

Guardianships were designed to protect the interests of incapacitated adults and elders, in particular. Yet Congress, national advocacy organizations, and the media have increasingly highlighted the abuse of guardianships and conservatorships as a means to exploit older persons. Uekert and Dibble (2008) note five major challenges for the court: (1) the determination of capacity, (2) costs associated with

administering guardianships, (3) training and education standards for judges and court staff, (4) court monitoring of guardianships, and (5) the collection of data.

A National Estimate and the Case for Improving Data Collection

This article focuses on the last of these challenges. In many ways, the absence of accurate national information regarding the numbers of people affected by guardianships, the conditions under which a guardianship is imposed, the services and alternatives being offered, the frequency and nature of misfeasance by guardians, and the possible warning signs of abuse hampers the ability of the courts,

service agencies, policy makers, advocates, and others to address the issues. For example, accurate information could be used to inform the provisions of the federal government’s Elder Justice Act, advance national guardianship standards, and develop court improvement programs. Furthermore, case-file data could be used to develop court performance measures that enable state courts to use evidence-based practices to improve processes. For this reason, it is critical to introduce into this discussion a national estimate of adult guardianship cases.

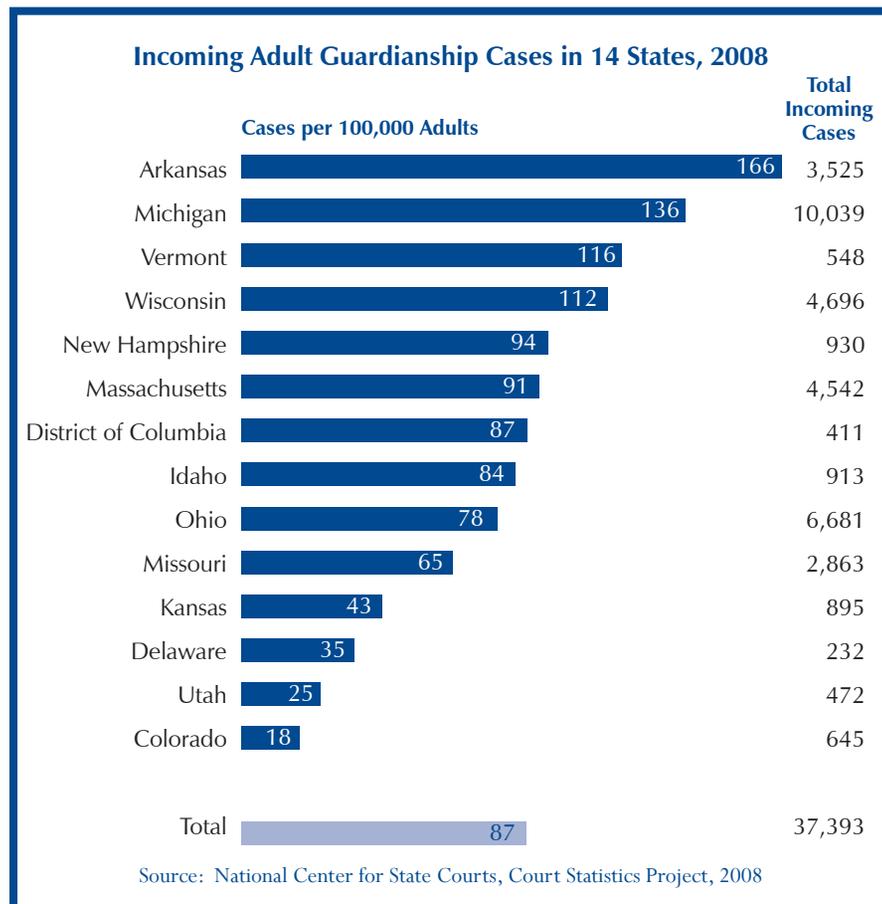
State court caseload data on adult guardianships is collected through the National Center for State Courts’ Court Statistics Project (CSP). Currently, few states are able to report complete statewide adult-guardianship caseload data, because these cases are counted in a generic probate case type or otherwise blended into civil caseload statistics. A number of states cannot distinguish adult guardianships from adult conservatorships as distinct case types. Other states include both juvenile and adult guardianships in a single “guardianship” case type. A case may begin as a simple conservatorship but evolve into a guardianship, and vice versa, further complicating the counting issues. Thus, a complete picture of how many adult guardianship and adult conservatorship cases are filed, closed, and pending nationally is not available.

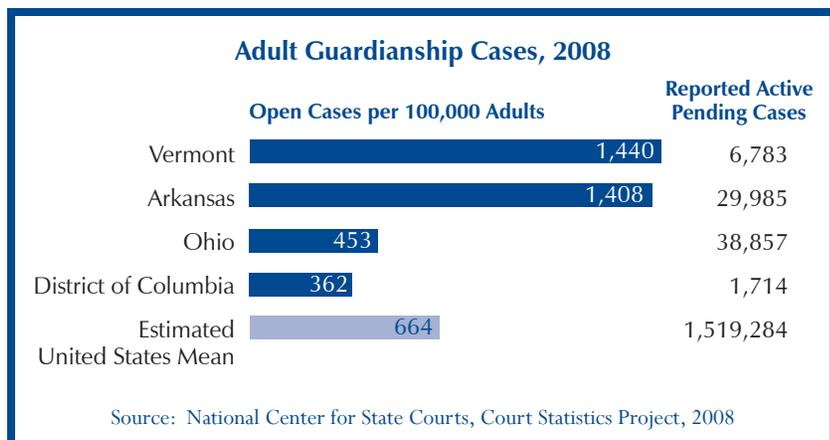
Despite the lack of comprehensive national data, 14 states report adult guardianship filings annually. The chart shows the number of incoming adult guardianship cases and the number of cases per 100,000 adults. The median number of incoming adult guardianship cases per 100,000 adults is 87. Conservatorship cases, which are not broken out by juvenile and adult, are not included in this analysis

Incoming guardianship cases represent only a fraction of all active pending cases. Guardianship cases often remain active for years and, in some cases, decades. Of these states, just four can differentiate active pending adult-guardianship cases (see chart on following page).

Adult Guardianship Cases, 2008

The reliance of projecting national estimates on data provided by four states is less than ideal. Yet the data, which do not include adult conservatorships, provide the best available figures for active pending adult guardianships at this time. Using an





average from the four states, there are 664 active pending cases per 100,000 adults. When applied to the U.S. adult population, this would mean there are 1.5 million active pending adult-guardianship cases. However, the variance between states is high, and the number of active pending adult-guardianship cases could range from fewer than 1 million to more than 3 million.

The ongoing challenges in documenting the number of adult guardianship and conservatorship cases have been the subject of numerous reports and calls for action. In 2007 Senators Gordon Smith and Herb Kohl, chairs of the U.S. Senate Special Committee on Aging, issued a report on “Guardianship for the Elderly” that encouraged the collection and review of electronic case data (Smith and Kohl, 2007). Subsequent calls for improved data collection include the following:

- In 2009 the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) passed Resolution 14, “Encouraging Collection of Data on Adult Guardianship, Adult Conservatorship, and Elder Abuse Cases by All States.”
- In 2010 the CCJ-COSCA Joint Task Force on Elders and the Courts issued a report recommending that “each state court system should collect and report the number of guardianship, conservatorship, and elder abuse cases that are filed, pending, and concluded each year” (Uekert, 2010). Each conference endorsed the recommendation.

- In 2010 COSCA adopted a policy paper urging funding for a National Guardianship Survey and support for the development of local data systems (COSCA, 2010). CCJ also endorsed this paper.

2010: Building Momentum for Guardianship Reform

Retrospectively, 2010 may be remembered as a pivotal year in the call for federal and state guardianship reform. A study by the General Accountability Office (GAO) highlighted cases of abuse and financial exploitation in guardianship cases; state task forces addressed guardianship and probate problems within their states; CCJ and COSCA issued reports and recommendations calling for system improvements; and national resources and events were launched or planned.

National Study

At the request of the U.S. Senate Special Committee on Aging, the GAO investigated the financial exploitation, neglect, and abuse of seniors in the guardianship system (GAO, 2010). GAO investigators focused on 20 cases in which guardians stole or improperly obtained assets from incapacitated victims. In the majority of these cases, the GAO found that the potential guardians were inadequately screened and there was insufficient oversight of guardians after appointment. Furthermore, the GAO, using fictitious identities, obtained guardianship certifications or met certification requirements in Illinois, Nevada, New York, and North Carolina. None of the courts or certification organizations used by those states checked the credit history or validated the Social Security numbers of the fictitious applicants. The investigation suggested that little had changed to protect incapacitated seniors since the GAO’s 2004 report on guardianships.

State Task Forces

At least three state supreme courts (Arizona, Nebraska, and South Carolina) established task forces to address guardianship issues. Following local media reports highlighting instances in which people lost much of their estates to attorneys and fiduciaries appointed to protect them, the Arizona Supreme Court created a task force to examine the conduct of probate courts. The task force presented an interim report to the Arizona Judicial Council in October and expects to issue a final report in June 2011. The report is expected to be a significant body of work

that includes such things as proposed legislation, fee schedules, and fee blueprints. The Nebraska Supreme Court appointed a task force in the aftermath of a high-profile case in which a court-appointed guardian had stolen large sums of money from several people under her care. In October, the Nebraska Joint Review Committee issued its final recommendations, elements of which have since been included in a bill introduced by the Nebraska legislature.² The South Carolina Supreme Court issued a task force report that noted the importance of probate courts and vulnerable adult issues, including guardianships and conservatorships.

CCJ/COSCA Recommendations

In March, the CCJ/COSCA Joint Task Force on Elders and the Courts issued a report based on an informal survey of guardianship data and issues. Among the recommendations was a call for federal, state, and private funding to support:

- Collection and analysis of national information regarding the number of guardianships and effective court practices.
- Development, evaluation, dissemination, and implementation of written and online material to inform nonprofessional guardians and conservators of their duties and responsibilities.
- The use of technology to improve guardianship reporting and accountability.
- Development, documentation, evaluation, dissemination, and evaluation of effective guardianship-monitoring procedures and technologies.
- Development and delivery of judicial training materials and courses.

COSCA's policy paper (2010) challenges states to establish guardianship task forces, improve court responses (with technical assistance), and appoint counsel in every case. At the federal level, the paper recommends supporting national data-collection efforts; creating a Guardianship Court Improvement Program (GCIP); including CCJ/COSCA representation on the National Elder Justice Coordinating Council; supporting a National Guardianship Summit for Courts; and enacting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. COSCA adopted the policy paper in December 2010, and CCJ endorsed it in January 2011.

National Resources

In June 2010, the National Center for State Courts launched the Center for Elders and the Courts (CEC).³ This Web site provides state and national resources on aging issues, elder abuse, and guardianships and features:

- An interactive map that allows users to access information on specific state laws related to elder abuse and adult guardianships, as well as links to state resources on aging.
- A database of "promising practices," such as court technologies and administration procedures that have been successfully implemented by courts.
- Ten training videos on such topics as creating an elder justice center, creating an elder protection court, and working with adult protective services.

Several products are scheduled to be introduced in 2011, including an elder abuse curriculum designed for presentation by state judicial educators and an elder abuse toolkit for the courts.

2011 Events and Activities

The National Guardianship Network received a grant to plan and present the Third National Guardianship Summit in October 2011.⁴ This summit follows the 1988 National Guardianship Symposium and the 2001 National Guardianship Conference. The theme of the 2011 summit is "Standards of Excellence." It will focus on development of standards for guardians and conservators and the establishment and operation of state guardianship committees. Additionally, late in 2010, grants were awarded by the State Justice Institute, the Borchard Foundation, and the ACTEC Foundations to enable the National College of Probate Judges, in partnership with the National Center for State Courts, to update the *National Probate Court Standards* to include best practices developed since the initial standards were promulgated in 1994.

National leadership and resources are needed to develop true and lasting reforms to protect the welfare of incapacitated adults.

Hopes and Concerns for the Future

Data

Improving the guardianship process and the quality of services provided to incapacitated adults is hampered by the lack of basic information. Reliable national data is needed not only on the actual number of guardianship cases that are filed, pending, and closed each year, but also on such important background information as the relationship between parties to a guardianship proceeding; age of respondents; the level and nature of disabilities when a guardianship is imposed; the scope of the guardianship order (e.g., limited, plenary, temporary, conservatorship); the value of the estate; the amount of guardian expenses and guardian and attorney fees; the level of Social Security and federal assistance; whether counsel has been appointed for the respondent or ward; the basis for determining incapacity; and the completeness and accuracy of annual accountings. In addition to guiding reform efforts, this information could be used for developing national performance measures for guardianship cases.

Federal Funding Assistance

The guardianship process has been likened to the child welfare process, as the court is responsible for the welfare of the individual placed under its watch. The handling of child welfare cases has greatly benefited from the 1993 Child Welfare Court Improvement Project (CIP).⁵ CIP grants are used to assess handling of child-abuse-and-neglect cases and make needed improvements; train judges, legal personnel, and attorneys in handling child welfare cases; strengthen the capacity of states to collect relevant data for performance measurement; and improve timeliness of decisions regarding safety, permanency, and well-being of children. The CIP includes an array of National Resource Centers to provide information and technical assistance. CCJ, COSCA, and members of the National Guardianship Network have called upon the federal government to implement a similar program for adult guardianships—a Guardianship Court Improvement Program (GCIP). National leadership and resources are needed to develop true and lasting reforms to protect the welfare of incapacitated adults.

Improved Methods for Preventing and Detecting Financial Exploitation of Vulnerable Adults

Finally, there is growing concern about abuses of vulnerable adults that occur outside the guardianship system—abuses that typically go undetected unless criminal laws are violated. Because a guardianship limits or abrogates the rights of the ward, it is considered an option of last resort. There is a strong preference for less-restrictive alternatives, such as appointment of a representative payee or authorized representative, durable powers of attorney, and use of joint accounts. The extent of financial exploitation that occurs in these relationships, especially power of attorney, is unknown. However, high-profile cases of power-of-attorney abuses may eventually lead to a call for some level of oversight.

ENDNOTES

¹ The following definitions are consistent with the definitions used by the Court Statistics Project (CSP). For the exact CSP definitions, visit the CSP home page at www.ncsconline.org/D_Research/csp/CSP_Main_Page.html, where you can view the *State Court Guide to Statistical Reporting*.

² At the time of this writing, LB157 was being debated, with the expectation that the bill will be signed into law by the end of the legislative session (June 2011).

³ The CEC was made possible through a generous grant from the Retirement Research Foundation of Chicago.

⁴ The National Guardianship Network includes AARP; Alzheimer's Association; ABA Commission on Law and Aging; ABA Section of Real Property, Probate, and Trust Law; American College of Trust and Estate Counsel Center for Guardianship Certification; National Academy of Elder Law Attorneys; National Center for State Courts; National College of Probate Judges; and the National Guardianship Association.

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A DECADE OF NCSC RESEARCH ON BLENDED SENTENCING OF JUVENILE OFFENDERS: WHAT HAVE WE LEARNED ABOUT “WHO GETS A SECOND CHANCE?”

Fred Cheesman

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Blended sentencing enables some courts to impose juvenile or adult sanctions (or both) on certain juveniles. Extralegal factors (race in particular) influenced the probability of a blended sentence and transfer to adult criminal court, even though both are rarely imposed, and objective risk-and-needs assessment information should inform decisions in these cases.

During the early 1990s, many state legislatures made sweeping changes in the dispositional and sentencing options available to juvenile courts, including the introduction of a new juvenile sentencing innovation, *blended sentencing*.¹ Blended sentencing enables some courts to impose juvenile or adult correctional sanctions (or both) on certain young offenders (Sickmund, Snyder, and Poe-Yamagata, 1997). While 16 states had blended-sentencing statutes in place at the end of 1995, at least 26 did so at the end of 2004, encompassing 60 percent of the nation’s juvenile population aged 10 to 17, according to data from the 2000 census. Thus, at least 60 percent of the nation’s juvenile population is subject to a blended sentence.

Blended sentencing emerged during a period of steadily increasing violent juvenile crime as a compromise between those who wanted to emphasize public safety, punishment, and accountability of juvenile offenders and those who wanted to maintain or strengthen the traditional juvenile justice system. It offers a means of resolving these disparate views because blended sentencing combines opportunities for rehabilitation in the juvenile justice system with the possibility of sanctions in the adult criminal justice system. Blended sentencing offers juvenile offenders a “last chance” within the juvenile system by providing “an incentive to respond to treatment in order to avoid the consequences of an adult sentence” (Redding and Howell, 2000: 147).

This article describes the results of two research studies conducted by NCSC between 1999 and 2010 that examined blended sentencing in three states. The first study examined blended sentencing in Minnesota and was funded by the State Justice Institute and the Office of Juvenile Justice and Delinquency Prevention. The second, funded by the National Institute of Justice and conducted in partnership with the National Center for Juvenile Justice (NCJJ), examined blended sentencing in Ohio and Vermont.

NCJJ has developed a widely used typology of blended-sentencing practices in the states (Torbet et al., 1996; see table). Of the 20 states with blended-sentencing laws at the end of 1997, nine gave blended-sentencing authority to *juvenile* court judges for cases involving some specified category of juvenile offender adjudicated delinquent. In nine other states, *criminal* court judges exercise blended-sentencing authority following a juvenile’s conviction. Two states, Colorado and Michigan, gave blended-sentencing options to both juvenile and criminal court judges.

Regardless of the forum in which it is exercised, blended-sentencing authority may be *exclusive* or *inclusive*, and under some circumstances, it may be *contiguous* (Torbet et al., 2000):

- An *exclusive* blended-sentencing model allows a judge to impose either a juvenile or an adult sanction and makes that sanction effective immediately.
- Under an *inclusive* blended-sentencing model a judge may impose *both* a juvenile and an adult sanction, with the latter usually remaining suspended and becoming effective only in the event of a subsequent violation.
- Finally, some states have enacted *contiguous* blended-sentencing laws, under which a juvenile court may impose a sanction that begins in the juvenile system but lasts beyond the maximum age of extended juvenile court jurisdiction, at which time the offender must be moved into the adult correctional system to serve the remainder of the sentence.

Minnesota has been practicing a form of juvenile-inclusive blended sentencing (i.e., the juvenile court imposes both juvenile and stayed adult sentences, the latter of which can be imposed at the discretion of the juvenile court) since 1994. In 2002 Ohio implemented juvenile-inclusive blended sentencing, based largely on the

Varieties of Blended Sentencing Used Across States

Type	Description	Adopted By	In Year
Juvenile-Exclusive Blend	The juvenile court imposes either juvenile (delinquency) or adult (criminal) sanctions.	New Mexico	1995
Juvenile-Inclusive Blend	The juvenile court imposes both juvenile and adult sanctions, typically suspending the adult sanction.	Illinois, Kansas South Dakota Minnesota Alaska, Arkansas, Connecticut Michigan, Montana, Vermont Ohio	1990 1993 1994 1995 1997 2002
Juvenile-Contiguous	The juvenile court imposes a juvenile sanction that would be in force beyond the age of its extended jurisdiction. At that point, the juvenile court determines whether the remainder of that sanction should be served in an adult criminal corrections system.	Texas Massachusetts, Rhode Island Colorado South Carolina	1987 1990 1993 1994
Criminal-Exclusive Blend	The criminal court imposes either juvenile or criminal sanctions.	Virginia, West Virginia Colorado Florida California, Idaho Michigan Oklahoma	1985 1993 1994 1995 1997 1998
Criminal-Inclusive Blend	The criminal court imposes both juvenile and criminal sanctions, typically suspending the criminal sanction.	Virginia Florida Arkansas, Michigan Iowa	1985 1994 1995 1997

Minnesota model. Vermont, while technically practicing juvenile-inclusive blended sentencing since 1998, provides a contrast because of the crucial role that adult criminal court judges play in the decision-making process.

In an effort to redress the absence of empirical data about the practice of blended sentencing, we next examine the results of the studies of blended sentencing in the three states.

Minnesota

Blended sentencing in Minnesota is referred to as “Extended Jurisdiction Juvenile,” or EJJ. EJJs are initially sentenced as juveniles although they receive all adult criminal procedural safeguards, including the right to a jury trial. Juveniles disposed EJJ receive a juvenile court disposition and a “stayed” adult prison

sentence, based upon the Minnesota Sentencing Guidelines for adult felons. Juvenile court jurisdiction lasts until age 21, hence the term “Extended Jurisdiction Juvenile.”

A random sample of 564 juvenile offenders (EJJs and transfers were oversampled due to their low frequency) was used to analyze the factors that differentiate EJJs from transfers to the adult criminal justice system and from juveniles processed through the juvenile justice system exclusively (“conventional” juvenile cases). The analysis was rigorous—a two-stage probit controlling for selection bias.

Important findings from this study include:

- EJJs and transfers occur infrequently. The Minnesota District Court disposes of approximately 10,000 juvenile felons annually, but only 2,400 of these meet the presumptive certification criteria that identifies a serious juvenile offender subject to transfer to the adult criminal justice system. Further, only 100 juveniles are transferred annually, and about 300 juveniles receive a blended sentence (about 1 percent and 3 percent of all juvenile felon cases disposed, respectively).
- The judicial district where the case was disposed influenced the probability of motioning (either for transfer or EJJ) and the type of dispositional alternative sentenced: transfer, EJJ, or conventional juvenile.
- The offender’s race influenced the probability of motioning and the type of dispositional alternative selected. Minorities were more likely to be motioned by the prosecutor for transfer or EJJ than white juvenile offenders and, among motioned cases, were more likely to receive a transfer than EJJ.
- EJJs had more serious charges than transfers, raising doubts about whether transfer was being reserved for the “worst of the worst” and blended-sentencing cases for the “least worst of the worst” (Feld, 1995). Consequently, it is not clear that EJJs and transfers were targeting their intended offender population.

Ohio

To compare the alternative processing tracks, NCSC collected data on the use of processing alternatives for juvenile offenders adjudicated for felony offenses between 2002 and 2004 from five counties in Ohio (Cuyahoga, Hamilton, Lucas, Summit, and Delaware). Although the sample from these counties does not constitute a random sample of juvenile adjudications across all counties in Ohio (N=28,628), it should be noted that these five counties accounted for a very significant proportion (75 percent) of Ohio's statewide juvenile adjudications between 2002 and 2004. The final sample included all blended-sentencing and transfer cases from the five counties, adjudicated or sentenced between 2002 and 2004 (139 and 164 cases, respectively). NCSC also drew a proportionate random sample of 340 conventional juveniles from each of the five participating counties.²

As was the case in Minnesota, we sought to analyze the factors that differentiate blended-sentencing cases (referred to as "Serious Youthful Offenders," or SYOs) from transfers from conventional juvenile cases in Ohio. A two-stage probit identified factors differentiating blended-sentencing cases from conventional juvenile cases and from cases transferred to the adult criminal court in Ohio.

The initial selection model revealed that factors differentiating conventional juvenile cases from cases selected for nonconventional processing (i.e., SYO or transfer) were principally legal, including offense seriousness and number of prior Ohio Department of Youth Services placements, although age and gender were also significant influences.

The second-stage probit identified factors differentiating transfers from SYOs, controlling for the probability of selection for nonconventional processing. Age, gender, and race were significant predictors of processing track. Minorities were significantly more likely than whites to be processed as transfers rather than as SYOs, suggesting possible bias in decision making.

As was the case in Minnesota, jurisdiction also influenced the selection of dispositional alternative. The odds of a blended sentence were higher in Delaware County than in Cuyahoga. The odds of transfer were much higher for juvenile offenders from Hamilton County than any of the other counties.

Just as in Minnesota, blended sentencing and transfer are rare occurrences. The ratio of SYOs to conventional adjudications was about 205 to 1, while the ratio for transfers was 174 to 1 in the five counties.

Vermont

Blended sentencing in Vermont combines elements of both criminal- and juvenile-inclusive blended sentencing. Blended-sentencing cases (referred to as "Youthful Offenders," or YOs) originate in the district court where a decision is made whether to grant a petition (usually filed by defense) to have a juvenile offender declared a YO, whereupon they become eligible for transfer to the family court for a blended sentence. Juvenile offenders whose cases were filed in district court may also be transferred to family court by means of a "reverse waiver," which is entirely at the discretion of the district court judge.

It is almost universal practice in Vermont to direct any juvenile case involving an offender 16 years or older to district court. The YO designation provides an opportunity to redirect certain offenders whose cases were directly filed in district court to the family court, where they are more likely to receive treatment.

We attempted to collect data on all YO and reverse-waiver cases from 1998 through 2006. A random sample of transfers that occurred during this period was obtained. Data were eventually collected on 106 YO cases, 170 reverse-waiver cases, and 185 transfers to the adult correctional system.

Data from Vermont samples could not support a multivariate analysis, but offered some interesting insights. First, blended sentences are rare in Vermont, just as they were in Minnesota and Ohio. Second, as was also the case in Minnesota and Ohio, geography influences the probability of receiving particular types of sentences. Third, as was the case in Minnesota and Ohio, transfers are significantly older than

Blended sentencing has the potential to be an important step in a juvenile justice system that provides a "graduated" response to juvenile offending.

blended-sentencing cases. Fourth, YOs had a much higher probability of being charged with property theft than any other type of case, while transfers and reverse waivers had a much higher probability of being charged for a civil disturbance. Fifth, YOs had a significantly larger number of convictions than reverse waivers and transfers.

Discussion

By providing the juvenile justice system with an intermediary response to juvenile offending, (i.e., between conventional juvenile processing and transfer to the adult criminal court), blended sentencing has the potential to be an important step in a juvenile justice system that provides a “graduated” response to juvenile offending (National Criminal Justice Association, 1997). However, to be effective in this capacity, blended sentencing must be free from bias and used in a manner consistent with public safety. Our research, however, suggests that in states employing juvenile-inclusive blended sentencing, minorities will be disproportionately overrepresented among transfers, the most punitive of the processing tracks, and underrepresented among blended sentences, the latter providing the last chance for treatment in the juvenile justice system.

The most promising solution to “rationalize” the use of blended sentencing and to avoid disparities in its use is to incorporate the principles of “risk and needs” in its application. A growing number of experts have advocated the incorporation of the risk principle throughout the criminal and juvenile justice systems to rationalize decision making and increase effectiveness (e.g., Warren, 2007). Objective risk assessment can reduce or eliminate undesirable bias in decision making (Coordinating Council on Juvenile Justice and Delinquency Prevention, 1996).³

Juvenile judges are currently making informal determinations as to offender needs and risk, but formal risk-and-needs-assessment procedures can improve the validity and fairness of such determinations (Silver and Chow-Martin, 2006). Consequently, our principal recommendation is that objective risk-and-needs assessments be used to identify the most suitable candidates for blended sentences and adult transfer. Use of objective risk-and-needs assessments to make these determinations will not completely eliminate risks to public safety, but should reduce them by better informing what have heretofore been predominately subjective decisions.

Who would be the best candidates for blended sentencing and transfer to the adult criminal justice system? Adult transfer would be reserved for a few of the oldest, most serious juvenile offenders that present the greatest risk to public safety and who are least amenable to treatment in the juvenile justice system, identified by objective assessments. The profile of juvenile offenders given blended sentences would be similar to that for transfers except that they would be younger (but older than most conventional juvenile court cases), would present less of a risk to public safety, and would have the greatest need for and potential to respond to treatment in the juvenile justice system, again identified by objective assessments.

Both transfer and blended sentences should remain very low frequency occurrences because most juvenile offenders are amenable to treatment in the conventional juvenile justice system. However, the use of blended sentencing should be expanded at the expense of transfers to avoid the transfer of inappropriate juvenile offenders to the adult criminal justice system, keeping more juvenile offenders in the juvenile justice system while also holding them accountable. The recommendations generated by the risk-and-needs assessments should not be binding on the juvenile court but will better inform the decision-making process.

Our second recommendation is to provide enhanced services and supervision to juvenile offenders given blended sentences. Given that these juvenile offenders are potentially subject to adult penalties (in addition to whatever requirements are imposed by the juvenile court) and that they have been determined to be amenable to treatment in the juvenile justice system, it follows that they should receive services designed to reduce their probability of reoffending, above and beyond those received by conventional juvenile offenders. As Vincent, Terry, and Maney (2009) point out, “Arguably, the most dangerous youths should receive the most punitive sanctions and the most intensive interventions” (p. 388).

Objective risk-and-needs assessments should be used to identify the most suitable candidates for blended sentences and adult transfer.

ENDNOTES

¹ Between 1992 and 1995, 41 states changed their laws to make waiver to adult court easier, 16 states modified or added statutes requiring mandatory minimum periods of incarceration for certain violent or serious offenders, and 12 states extended the maximum age of the juvenile court's continuing jurisdiction over juvenile offenders—most often to age 21 (Sickmund, Snyder, and Poe-Yamagata, 1997).

² That is, the randomly selected sample of conventional juvenile offenders was proportionately distributed among the five counties according to the proportion that each county represented of the total 2002-04 adjudications.

³ Objective risk-assessment instruments were created to minimize subjectivity and unreliability associated with clinical decision making. Objective tools evaluate all offenders using the same set of criteria and information that can be factually verified. The results are then tabulated in some fashion, and predetermined uniform decision functions, such as cutting scores or decision trees, decide the outcome.

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RESPONDING TO THE NEED FOR ACCOUNTABILITY IN MENTAL HEALTH COURTS

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Mental health courts (MHCs) are a growing part of the problem-solving court movement. MHCs must provide performance data to track just how well they are performing their function.

A fairly recent trend in the court community is an increase in dockets dedicated to resolving recurring appearances of individuals with a common social problem. While this trend is undoubtedly on the rise, there are numerous questions that remain unanswered regarding the best direction for such courts to take. This article will explore how mental health courts (MHCs), as a component of this growing area of problem-solving courts, can best administer their programs and respond to the demands of their constituents and funding agencies in this ever-changing landscape.

Based on the anecdotal successes of early drug courts, states have expanded the therapeutic problem-solving court model by developing specialized courts or court dockets to address a number of social problems. In addition to drug courts, the label “problem-solving courts” has been applied to dockets or programs involving quality-of-life offenses (i.e., community courts), domestic violence, juvenile/status offenses (e.g., teen, girls’, truancy courts), veterans issues, reentry, gambling, homelessness, and mental health issues (including co-occurring disorders). As this list continues to grow, more research is desperately needed to sift through the diverse array of problem-solving approaches and, before the cart gets too far ahead of the horse, help refine current knowledge and understanding of which programs work, for whom, and why.

. . . more research is desperately needed to sift through the diverse array of problem-solving approaches. . .

A national map of problem-solving court infrastructure is lacking.¹ In fact, the research community does not know the exact number of problem-solving courts and is unable to track centralized documentation on participant and program characteristics. What is known about problem-solving courts is limited to evaluations or outcome analyses of *specific* court programs (see e.g., Wales, Hiday, and Ray, 2010). Despite the widespread trend to expand the use of problem-solving courts, existing research reveals little at this time about the effectiveness of specific programs, the populations for whom this therapeutic approach works, and how to sustain the programs that work.

The paucity of formal national-scope investigative research stems, in part, from the fact that many problem-solving court programs are relatively new and have limited resources for evaluation. Although ad hoc sources offer funds for program implementation and development, these dry up quickly, leaving problem-solving courts to rely on state or local funds to sustain regular court operations. However, states have been hit hard by the economic downturn, and courts remain uncertain of their fate as more courts face consolidation and institute mandatory furlough days as cost-cutting strategies. In addition to cost-cutting measures that threaten problem-solving courts’ ability to operate, courts often lack the financial resources necessary for the type of data-collection efforts that would demonstrate their own capacity for positive change. Ironically, without such empirical evidence or assessment of performance, these programs are ill-equipped to campaign for the sustained or expanded state and local support necessary for continued operations. Thus, despite perceived or anecdotal successes, funding shortages will force some problem-solving courts to close their doors.

To produce evidence-based conclusions about the efficacy of problem-solving courts, an understanding of these programs and the many faces of their clients is needed. A comprehensive, standardized research program will help focus assessment efforts and answer lingering questions about which problem-solving court programs achieve their stated missions, and for whom they are most effective. Ultimately, this effort will facilitate a better understanding of what does and does not work with problem-solving courts, guiding funding agencies, legislators, policy makers, and courts toward more informed decisions about these programs. To address this need, however, the first fundamental step is for MHCs to gather empirical data on their performance.

Mental health courts must demonstrate their accountability to funding sources, court leaders, the community, and stakeholders.

MHCs must demonstrate their accountability to funding sources, court leaders, the community, and stakeholders. Accountability translates to defining what is “success” as it relates to a stated mission. MHCs must assess whether the program meets those goals and demonstrate their sustainability.

Some critics of problem-solving courts suggest that the expansion and specialization of so many types of problem-solving courts is detrimental to their sustainability. If specialization becomes too granulated, courts will eventually reconsider the value of each docket as a separate entity as opposed to working within the administrative structure and culture of the court as a whole. For example, how are MHCs organized in relation to drug courts (e.g., co-occurring dockets)? How are MHCs operating in conjunction with veterans courts (e.g., addressing post-traumatic stress disorder, depression)?

These critiques and questions call on courts to demonstrate high-quality performance to justify the need for the program. Are participants reoffending? Are participants held accountable for court-ordered treatment? Are participants efficiently progressing through the program? Is the collaboration with other agencies effective? Are participants receiving the appropriate levels of treatment and supervision? Are participants exiting the program with the tools necessary for successful transition away from court supervision?

Performance measurements provide courts with answers to these questions. Performance measurement is considered an essential activity in many government and nonprofit agencies because:

[A]gencies have a greater probability of achieving their goals and objectives if they use performance measures to monitor their progress along these lines and then take follow-up actions as necessary to ensure success (Poister, 2003).

Effectively designed and implemented performance measurement systems provide tools for managers to exercise and maintain control over their organizations, as well as act as a mechanism for governing bodies and funding agencies to hold organizations accountable for producing the intended program results.

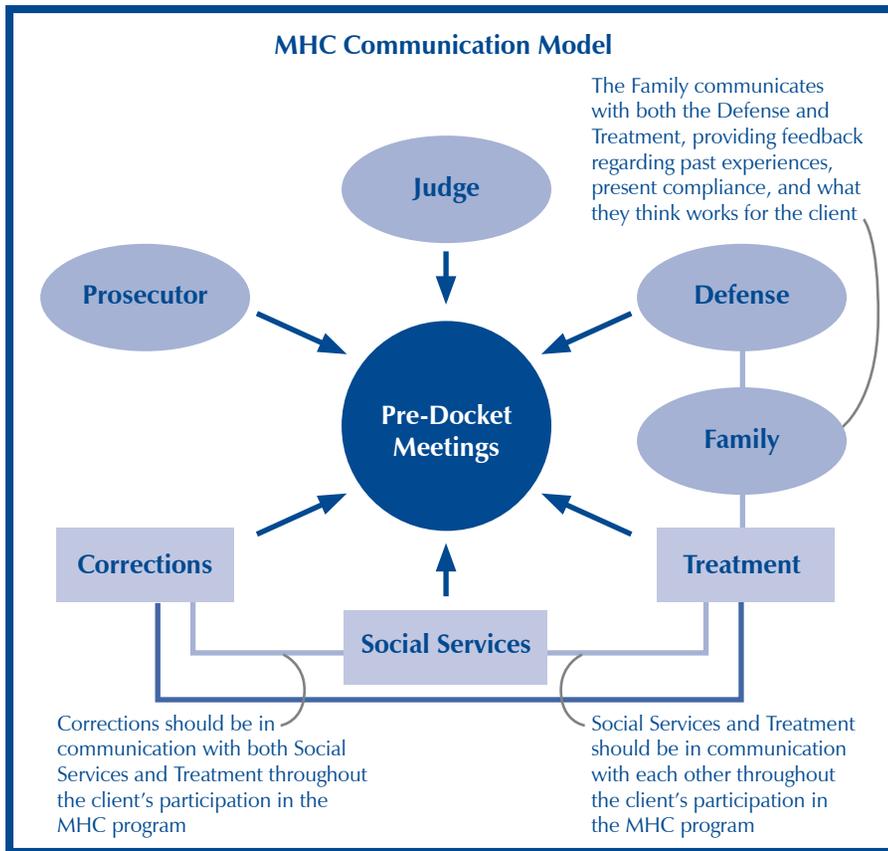
In response to these needs, the NCSC developed performance measures designed specifically for MHCs.² This effort was informed by the High Performance Court Framework (Ostrom and Hanson, 2010). This Framework provides balanced perspectives regarding customers, internal operations, innovations, and social value. This work was also informed by field work in which the performance measures were tested by four courts over a six-month pilot project (Waters et al., 2010). At the conclusion of the pilot period, a focus group of key data specialists from the courts discussed challenging experiences and notable improvements made in the courts that were a result of the data collection efforts. From this discussion it became obvious that the diversity of MHCs required the NCSC to develop measures that are broadly applicable to programs across the country, and practical for implementation.

To help MHCs to be accountable to their funding sources and stakeholders, the NCSCs performance measures incorporate three key perspectives: (1) MHCs must be efficient in serving the participants and coordinating interagency interactions (e.g., monitoring compliance reporting between participants and the MHC team, timeliness, and thoroughness of docket hearings); (2) Participants are expected to improve social functioning with a mental illness, establish a productive life in the community, reduce recidivism, and establish a network of support; and (3) MHCs should be evaluated as procedurally just (Tyler and Lind, 1988) from both the public’s and the participant’s perspectives.

All courts, whether employing specialized dockets or not, must address the first perspective—timeliness and efficiency of operations in assessing performance.³ In MHCs, processing delays are an end product of the involvement of multiple agencies. Simple coordination and communication can be rife with logistical and structural complexity. Thus, the MHC performance measures assess interactions both with external agencies and, internally, between the MHC team and the participant.

The MHC is a team of individuals, each representing a key interest. A diagram of each of the networked interests is depicted in the figure below (Waters, Strickland, and Gibson, 2009). The judge, prosecutor, and defense attorney compose the traditional criminal-court “team.” In the MHC, as in most problem-solving courts, representatives from treatment providers, social services, and corrections are also integrated as part of the team (see figure below).

Information is exchanged across agencies, so understanding the culture, role, and perspective of each agency represented in the MHC will advance the level of communication and the effectiveness of the interactions among team members.



Due to the multiple perspectives and possible conflicting priorities that are inherent in team interactions, a successful MHC program balances the need for input from all team members. Performance measures that assess the effectiveness of this collaboration provide valuable feedback to the court manager or administrator and ultimately affect the ability of the court to operate at peak levels.

In an MHC, improving a client's social functioning is equally as important as reducing recidivism, as captured by the second perspective in developing performance measures. In fact, a premise of MHCs is that improved social functioning is the key to reducing recidivism. MHC participants should thus be expected to establish reliable and stable relationships and network with appropriate supportive agencies. As such, performance measures for MHCs assess whether participants receive on-target treatment services during the program. Moreover, to sustain social functioning, performance measures capture whether participants graduate with a plan for continued aftercare treatment. Clients should engage in behavior that establishes productivity within and contribution to their community (e.g., volunteer work, educational opportunities, employment). Most important, participants should be able to sustain adequate housing.

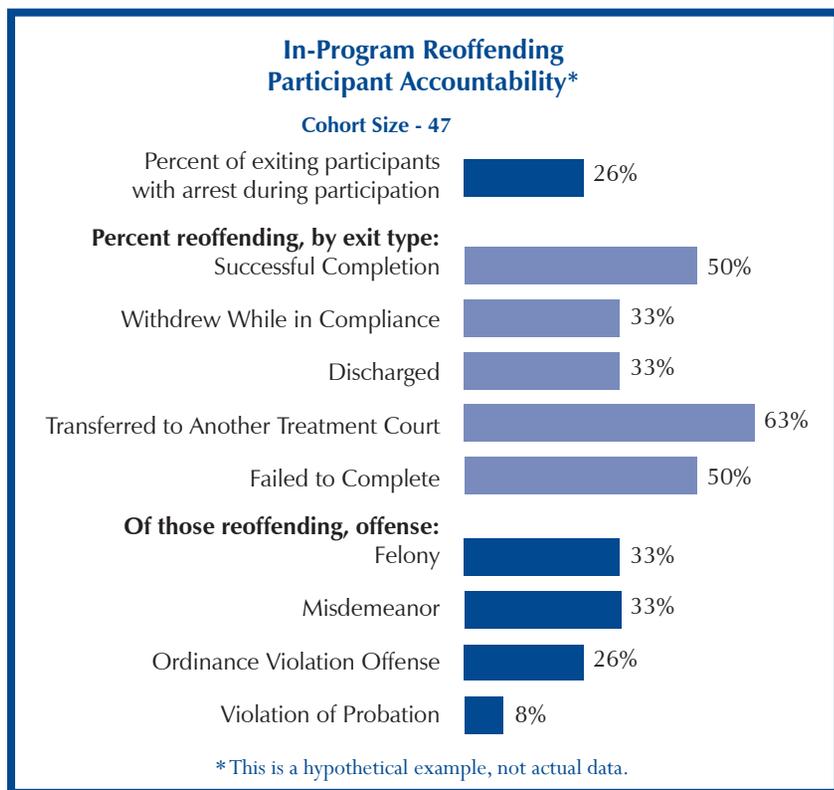
The perception that the process of decision making and the procedures are fair encompasses the concept of procedural justice. As it applies to MHCs, the court must gain the public's trust and confidence that the program is not just a loophole for defendants facing jail time. Similarly, the participant's perspective is important to ensure that admittance and participation in the program is fair and just. In other words, years of judicially supervised treatment is not seen as more punitive than the conventional punishment (e.g., jail time). Measuring participants' views of fair treatment is valuable in MHCs and has been linked to program outcomes in drug courts (Gottfredson et al., 2007).

NCSC's Mental Health Court Performance Measures

Integrating the previous perspectives, the NCSC developed 14 performance measures for MHCs that cover key measurement domains, but are few in number and relatively simple to implement. A list of the performance measures and the *Implementation and User's Guide* can be found online (Waters et al., 2010). In an effort to simplify the implementation, the NCSC developed templates designed to

automatically calculate the measures and display the results as a graph (see figure below). As MHCs begin to routinely monitor performance, baselines and standards will become evident. Then courts can develop goals for achieving a desired level of performance.

Generally speaking, the purpose of an MHC is to divert offenders with mental illness from incarceration into judicially supervised and appropriate individualized treatment. This goal balances the importance of public safety to the community and personal responsibility for criminal activities with the recognition that the current criminal justice system has repeatedly failed to deter or reform these individuals. The extent to which MHCs offer an effective problem-solving alternative to the criminal justice system is currently unanswerable without additional research.



However, performance measures designed specifically for MHCs provide valuable and necessary empirical data to respond to the need for MHCs to be accountable and sustainable.

Next Steps

All courts are challenged to find and implement creative solutions to manage caseload and administer programs such as MHCs. One way to provide courts with the tools and feedback necessary to improve these programs is to implement and incorporate performance-measurement-data collection among regular court management practices.

It should be noted, however, that performance measures are but a first step in understanding and improving MHCs. Performance measures focus on *outcomes*, which are the measures of the stated objectives of the program. Performance measurement involves: (1) planning and meeting established operating goals for intended outcomes; (2) detecting deviations from planned levels of performance; and (3) restoring performance to the planned levels of performance. Determining *impact* or studying program *effectiveness* is much more difficult and requires quasi-experimental studies. These studies require estimates of attribution, i.e., the benefits that would not have occurred had the program not existed (Lipsey, 2004).

Studying the effectiveness of MHCs presents a number of challenges in regards to the design and implementation of appropriate measures. Wolff and Pogorzelski (2005) argue that to test an intervention like MHCs properly, other factors need to be held constant so that the change can more confidently be attributed to participation in MHC. With the complex nature of the court and pressures exerted by both internal and external factors, it becomes nearly impossible to control all the potential influences.

The way in which program effectiveness measures such as recidivism and treatment compliance are measured can drastically influence whether there is a perceived positive effect from the MHC (Wolff and Pogorzelski, 2005). For example, noncompliance or reoffending may be higher for participants due to the increased monitoring that one receives through participation in the program. Thus, a program's effectiveness is best assessed by including a broad range of measurements.

It is important to expand the evaluation of the court's performance to a broader set of outcomes, including changes in quality of life for the individual and related family members, family burden, stable housing, involvement in education or vocational training, stable employment, and participation in civic activities (Wolff and Pogorzelski, 2005).

With the knowledge gained from a much-needed national survey of court, caseload, and participant characteristics of problem-solving courts, researchers will be better equipped to conduct a more systematic program analysis and establish optimal offender eligibility and selection criteria. Yet, first and foremost, courts must collect data that measures their performance.

ENDNOTES

¹ The National Center for State Courts (NCSC), with funding from the Bureau of Justice Statistics, is currently conducting a census of problem-solving courts (Grant #2010-BJ-CX-K075). The NCSC is partnering with the National Drug Court Institute, who has developed a map of drug courts across the nation (see www.nadcp.org/learn/find-drug-court).

² This NCSC project was funded by the Bureau of Justice Assistance (Grant 2007-DD-BX-K162).

³ See *Trial Court Performance Standards*, Measure 2.1.1 ("Time to Disposition"), which was adopted by the Conference of State Court Administrators, the Conference of Chief Justices, and the American Bar Association (www.ncsconline.org/D_Research/tcps/Measures/me_2.1.1.htm), and NCSC's *CourTools*, Measure 3 (www.ncsconline.org/D_Research/CourTools/Images/courtools_measure3.pdf).

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EDUCATIONAL WELL-BEING: COURT OUTCOME MEASURES FOR CHILDREN IN FOSTER CARE

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Although safety and permanency performance measures for cases involving children in foster care have been established, tested, and implemented, court-related well-being measures have yet to be developed. This article describes the initial effort to establish a set of educational well-being measures to track success in improving educational outcomes for children in foster care.

Although they each have different roles to play, courts, child welfare agencies, and schools are all important to the achievement of safety, permanency, and well-being for children in foster care. Outcome measures help all participants by identifying which practices are most effective and where improvement is needed.

The Adoption and Safe Families Act of 1997 (ASFA) identifies well-being as a dimension of performance measurement. Building on the mandates of ASFA, the federal government is working with state child welfare agencies to assess outcomes for foster children through Child and Family Services Reviews (CFSR).

Although well-being measures have been an accepted part of the CFSR process, court-related well-being measures have yet to be established. Given that courts have the responsibility to make sure the state is providing proper care to children in its custody, they must inquire whether those children are receiving a quality education and are physically and emotionally healthy.

In partnership with Casey Family Programs, the National Center for State Courts (NCSC) convened a focus group in October 2010 to develop dependency-court performance measures specific to education—one of the components of well-being

The disjointed governmental “parenting” of foster youth creates a failure to share information and a lack of coordinated decision making. The results for too many former foster youth may be unattended health and emotional needs; poor educational attainment; and an adult life of homelessness, unemployment, and despair.

*- William Vickrey, California’s State Court Administrator
(Administrative Office of the Courts, 2005)*

for children and youth. Focus group members were distinguished representatives from child welfare agencies, educational and research institutions, the advocacy community, and the courts.¹ Its mission was threefold: to identify (1) potential education performance measures; (2) the data elements needed to produce those measures; and (3) strategies to overcome obstacles to sharing data among courts, child welfare agencies, and education. The result was a set of proposed education performance measures for tracking well-being and ultimately improving educational outcomes for children in foster care.

Well-Being: The Fifth Dimension of Court Performance Measurement in Child Abuse and Neglect Cases

Under ASFA, a child’s well-being refers to factors other than safety and permanency that relate to a child’s current and future welfare—most notably, the child’s educational achievement and mental and physical health. ASFA well-being outcome goals are:

1. Families have enhanced capacity to provide for their children’s needs
2. Children receive appropriate services to meet their educational needs
3. Children receive adequate services to meet their physical and mental health needs

To the extent that courts have the responsibility to make sure that the state is providing proper care to children in its custody, it may be helpful for courts to use child well-being measures to evaluate their own performance. Courts need to know whether those children are receiving a good education and are physically and emotionally healthy. If a local court learns, for example, that children in court-supervised foster care are substantially behind educationally, the court may decide to ask more penetrating questions about children's educational attainment. The court may decide to demand more documentation about the child's education, may instruct guardians ad litem to check into the child's educational progress, and may even encourage collaboration among school officials, child welfare workers, and attorneys to discuss the educational needs of children in foster care and how best to address them.

At the time court performance measures were being developed for safety, permanency, due process, and timeliness, staff of the then child welfare collaborative of the American Bar Association (ABA), National Center for State Courts (NCSC), and National Council of Juvenile and Family Court Judges (NCJFCJ), now partners in the National Child Welfare Resource Center on Legal and Judicial Issues, decided to postpone working on court well-being measures.² The time to address well-being measures has now not only arrived but is past due.

Measures of educational well-being are a good place to start because some of the best predictors of success for children in foster care are related to education (Casey Family Programs, 2007a). Judges who inquire about the educational progress of children and youth in foster care set expectations and standards for practice,

“For every child, a consistent, appropriate education can clear the path to adult independence and opportunity. For children in foster care, appropriate schooling and educational services can additionally strengthen prospects for a stable, permanent home.”

- Hon. Judith S. Kaye, ret. (New York State Permanent Judicial Commission on Justice for Children, n.d.)

which may have “a significant impact on how social workers, educators, and other service providers respond to young people in the future” (Gatowski, Medina, and Warren, 2008). The focus group recognized that the courts may not be able to impact student performance directly, but nevertheless should set high expectations for educational success by monitoring student educational stability, progress, and outcomes.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110-351) requires states to create education-stability plans for all children in foster care. These plans must include assurances that (1) foster-care placements take into account the appropriateness of a child's educational setting and proximity to the school in which the child is enrolled at time of placement; (2) children remain in the school they were attending at the time of placement (unless not in their best interest) even if they move away from that school's boundaries; and (3) when it is not in the best interest to remain, children are immediately enrolled in a new school with all education records to follow. Judges are beginning to recognize their role in ensuring the well-being of children in child protection cases as well, and some courts are becoming interested in tracking well-being indicators. For example, California's 2009 *Implementation Guide to Juvenile Dependency Court Performance Measures* includes well-being measures (Administrative Office of the Courts, 2009). Educational well-being is also one of the indicators of family self-sufficiency, an index of family strength developed and used in Oregon. Additionally, in a *Toolkit* performance-measurement survey of Court Improvement Program directors conducted in 2010 by NCSC on behalf of the National Child Welfare Resource Center on Legal and Judicial Issues (2010), many respondents indicated the desire for assistance in the development of well-being measures.

One of the historical reasons for excluding well-being performance measures is that court well-being measures typically require an exchange of data between the courts and child welfare agencies. While exchanging data with child welfare agencies was a significant barrier in the past, technological advances have been responsible for much of the recent progress. Many state and local jurisdictions currently exchange data between the courts and local child welfare agencies (Flango, 2009). Another substantial hurdle to the adoption of well-being measures has been concerns about maintaining privacy and confidentiality. Again, recent developments in both policy and technology have lessened the extent of these concerns.³

The Importance to Foster Children of Measuring Educational Outcomes

For many of the almost 800,000 children and youth housed in foster care each year in the United States, “the educational outcomes are dismal” (National Working Group on Foster Care and Education, 2008). The long-term outcomes for those with poor educational experiences include difficulty in the transition to adulthood, poverty, homelessness, and incarceration. A variety of factors explain this educational crisis, including the following: (1) children in the dependency system, including those in foster care, are subjected to a variety of risk factors; (2) these children have poor experiences in the education system; and (3) foster households are at a disadvantage when compared to all households with children. Risk factors that children in the dependency system face include their history of abuse and neglect, poverty, emotional disorders, learning disabilities and developmental delays, poor physical health, exposure to antisocial peers, and poor family relationships (Leone and Weinberg, 2009). They also face many educational challenges, including problems with enrollment; difficult transfer of credits and school records; frequent mobility between school placements; disciplinary problems; lack of necessary early education and special education services; and inability to participate in extracurricular activities. As a result of such challenges, these children are more likely to suffer academically; less likely to finish high school; less likely to attend college; less likely to make lasting friendships among peers; and more likely to be ill-prepared for adulthood.

To begin its work and discussion, the focus group was presented with a draft set of preliminary education performance measures from six outcome areas.⁴

School Placement Stability

According to 2002 AFCARS data, children have an average of one-to-two living placement changes per year while in care (Casey Family Programs, 2007b, citing AFCARS data, 2002). Changes in living arrangements can often result in a change in school placement. Frequent school moves have an extremely negative impact on the educational outcomes for children and youth with multiple school placements, in part due to enrollment delays and credit transfer problems. Furthermore, children and youth who experience frequent school transfers are unable to make lasting relationships with friends and teachers and experience difficulty participating in extracurricular activities.

Only 1.8 % of foster-care alumni completed a bachelor’s degree. This compares to 24 % in the general population of individuals the same age.

Academic Performance

Overwhelming research has shown that the academic performance and educational outcomes for children and youth in foster care is considerably lower than for other demographically similar students. For example, a 2001 Washington State study found that twice as many youth in foster care at both the elementary and secondary levels repeated a grade compared to youth not in care (Casey Family Programs, 2007b).

Early Education

Research has established the importance of the early years of a child’s life in terms of their social and emotional development and educational success. A 2005 national study of 2,813 children in the child welfare system found that approximately 40 percent of toddlers and 50 percent of preschoolers have high developmental and behavioral needs. However, the study also found that only 23 percent of children are receiving services for these issues (National Working Group on Foster Care and Education, 2008: 9).

Special Education

Many studies indicate that somewhere between 23 and 47 percent of children and youth in foster care receive special-education services compared to the national average of about 12 percent for all school-aged children. A 1990 Oregon study found that children who had multiple foster placements and who needed special education services were less likely to receive those services than children in more stable placements (National Working Group, 2008).

Social Behavior

Children and youth in foster care are at risk for behavioral problems in school. “Several studies have found that children and youth in foster care are significantly more likely to have school behavior problems and that they have higher rates of suspensions and expulsions from school” (National Working Group, 2008).

Postsecondary Entrance Rates

Foster youth should be supported in their preparation, pursuit, and success in postsecondary education. However, according to the Northwest Alumni Study, only 1.8 percent of foster-care alumni in the study completed a bachelor’s degree. This compares to 24 percent in the general population of individuals the same age (Casey Family Programs, 2007b). Further, “75% of students in foster care said that they wanted to go to college but few had taken the necessary coursework” (Casey Family Programs, 2006).

Proposed Education Performance Measures

After serious deliberation, discussion, and revision, the focus group settled on 14 proposed measures of educational well-being.

The focus group consciously sought to balance the goal of obtaining all of the measures necessary to obtain a clear picture of the educational status of children in foster care with the practical considerations of cost and personnel time required to collect data elements necessary to support all of the measures. Proposing too many measures could discourage some courts, schools, and child welfare agencies from even attempting to obtain measures of educational well-being. Consequently, the focus group was asked to select a small number of key measures to join the nine key outcome measures of safety, permanency, due process, and timeliness. The focus group selected four priority performance measures.

5A: Percentage of Children Under Court Jurisdiction Who Did Not Have a School Change When They Had a Change in Living Placement

What is the goal? School Placement Stability

School placement stability is essential to successful educational outcomes for children and youth in foster care. When children and youth experience a change in living placement, the Fostering Connections to Success Act requires states to ensure

MEASURE	SHORT DEFINITION
5A	Percentage of Children Under Court Jurisdiction Who Did Not Have a School Change When They Had a Change in Living Placement
5B	Median Number of School Transfers While Under Court Jurisdiction
5C	Median Number of School Days Between the Last Day Attended at Old School to First Day Attended at New School
5D	Percentage of ASFA Hearings Where the Child’s Education Was Addressed
5E	Percentage of Hearings Where the Child’s Education Decision Maker Was Present
5F	Percentage of School-Aged Children Performing at or Above Grade Level at Case Closure
5G	Percentage of School-Aged Children Who Drop Out of School While Under Court Jurisdiction
5H	Percentage of Children Who Attended at Least 95% of School Days While Under Court Jurisdiction
5I	Percentage of Children Ages 0-3 Who Have Been Evaluated for Early Intervention Programs While Under Court Jurisdiction
5J	Percentage of Children Ages 3-5 Who Have Been Enrolled in an Enriched Early Education Childhood Program While Under Court Jurisdiction
5K	Time from Referral for Special Education Services to Assessment
5L	Time from Completion of Special Education Services Assessment to Delivery of Services
5M	Percentage of Children Under Court Jurisdiction Who Have Received School Disciplinary Actions
5N	Percentage of High School Graduates/GED Holders Under Court Jurisdiction Who Have Been Accepted into a Post-Secondary Education Program

that foster-care placements consider the appropriateness of a child's educational setting and proximity to the school in which the child is enrolled at time of placement. The goal is to place children in living situations that will not affect where they attend school, unless it is their best interest to change schools. The desired outcome is to minimize school transfers when living placement changes.

5D: Percentage of ASFA Hearings Where the Child's Education Was Addressed

What is the goal? Academic Performance

A child's education should be thoroughly addressed at every ASFA hearing to ensure educational success for children and youth under court jurisdiction. Further, when the judge asks questions about the child's education from the bench, it also serves to set expectations and standards for practice that will focus on the educational success for children in foster care. This measure provides the court with an indicator of how often education is addressed at ASFA hearings.

5J: Percentage of Children Ages 3-5 Who Have Been Enrolled in an Enriched Early Education Childhood Program While Under Court Jurisdiction

What is the goal? Academic Performance

Children ages three to five should be well-prepared to enter school. But unfortunately, many of these children in the foster-care system have developmental delays or other physical or mental conditions that put them at a disadvantage going into the educational system. The court should ensure that these children receive the early services and programs they need to succeed. Still other three-to-five-year olds without developmental delays or disabilities will also benefit from enriched education programs to ensure they are provided the right foundation to enter school ready to learn.

5N: Percentage of High School Graduates/GED Holders Under Court Jurisdiction Who Have Been Accepted into a Postsecondary Education Program

What is the goal? Educational Success—Postsecondary Education

Youth in foster care should be prepared and supported in their pursuit of postsecondary education. However, the percentage of foster children who actually pursue and complete postsecondary education is extremely low. This measure

allows the court to see the percentage of high school graduates and GED holders under its jurisdiction who have been accepted into a postsecondary education program.

It may be a challenge to produce just these four priority measures of educational well-being, but it is here that the process should begin. The work of the focus group provides an excellent foundation for developing court-related education outcome measures in child abuse and neglect cases. These measures are currently being vetted to a larger audience as part of a discussion of how best to improve collaboration among education, child welfare, and the courts, including how to facilitate the exchange of data required to produce these education measures.

After the measures have been vetted, the next step will be to work with selected jurisdictions to pilot-test some of the measures to see how they work in practice and what obstacles arise when educational well-being measurement is instituted. Only then can these measures be recommended for adoption by courts throughout the country.

ENDNOTES

¹ Focus group members are Ms. Kate Burdick, Zubrow Fellow, Juvenile Law Center, Philadelphia; Dr. Gretchen Cusick, Chapin Hall; Hon. Robert R. Hofmann, associate judge, Child Protection Court of the Hill Country, Mason County, Texas; Dr. Michelle L. Lustig, MSW, Ed.D., coordinator, San Diego County Office of Education, Student Services and Programs, Student Support Services, Foster Youth Services; Ms. Kathleen McNaught, assistant director, ABA Center on Children and the Law; Mr. Ronald M. Ozga, Governor's Office of Information Technology, agency IT director for CDHS, HCPF, CBMS, Colorado Department of Human Services; and Ms. Regina Schaefer, director, Education Unit, New York City Children's Service. Their invaluable contribution to this project is gratefully acknowledged.

² In the wake of federal dependency-court-reform efforts, including the Court Improvement Program (CIP) and the passage of ASFA, court performance measures in child abuse and neglect cases were developed by the ABA, NCJFCJ, and NCSC with support from the David and Lucille Packard Foundation. One result of this collaboration was the 2004 publication *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases*, which proposed performance measures in the areas of safety, permanency, due process, and timeliness. These measures were field-tested in 11 states in 2009 and published as the *Toolkit for Court Performance Measurement in Child Abuse and Neglect Cases* (2009).

³ For information on privacy and confidentiality issues, see Legal Center for Foster Care and Education (2008); see also Administrative Office of the Courts, Center (2010).

⁴ These preliminary measures were derived from, with minor modifications, the educational outcomes identified by Casey Family Programs (2007b).

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ENHANCING ACCESS TO JUSTICE

“As judges we will confront the challenges of today and those of the future in much the same manner that we have in the past: by applying our breadth of knowledge, our depth of understanding so that we may fairly apply the rule of law.”

Chief Justice Eric Brown of Ohio, State of the Judiciary 2010

THE NEED FOR SOLID COURT LEADERSHIP: REFLECTIONS ON THE FOURTH NATIONAL SYMPOSIUM ON COURT MANAGEMENT

Michael L. Buenger

National Center for State Courts

What must the courts do to adjust to the changing realities of an increasingly complex world? The answer requires establishing a well-defined governance structure; providing a uniform message not only to the other branches of government, but also to the public; and forging positive relationships both inside and outside of courts.

The profession of court administration originated in the United States over 40 years ago as an outgrowth of a revolution in public administration taking place throughout the 20th century. Through fits and starts, court administration has emerged as a truly global profession that is seen as critical in the successful development of courts and the promotion of the rule of law. Having been on the vanguard of developing and exporting the profession of court administration, it is appropriate that some 40 years on we examine whether the constructs, mechanisms, and structures for governing judiciaries today remain viable in the increasingly complex world where courts do more than just decide cases. Have we, the originators of an emerging global profession, become so comfortable with our governing models that we are failing to adjust to the dynamic forces around us, forces that may be calling for a reexamination of how the Third Branch organizes and operates in a complex, interconnected, and yet diverse world? The short question is this: How effective are our current systems of governance and how might they have to be adjusted given the new realities facing state courts?

Framed by efforts undertaken through the NCSC/Harvard Executive Program, and the work of Utah Chief Justice Christine Durham and Administrative Director Daniel Becker, who developed ten principles for court governance, the first day of the Fourth National Symposium on Court Management (October 27-28, 2010, Williamsburg, Virginia) focused on court leadership. Plenary session discussions and group reports provide insight into emerging ideas of court governance, the diversity of viewpoints on the issue, and the recognition that ever stiffer

competition for resources and status are impacting the future. They also reveal a continuing debate on how to best govern the Third Branch of government. If the recurring budget crises of late say anything, they say that courts face an increasingly competitive environment and must adapt management and administration to this reality. One of the great promises of America has been the guarantee of access to justice.¹

But it is no longer sufficient to appeal to platitude notions of “a constitutional requirement” when difficult questions are being asked of public institutions across the spectrum of their operations. Nor is it satisfactory to assert “but we’re different” when the public is demanding greater accountability, efficiency, and effectiveness from all government.

Our efforts, therefore, should be, as Chief Justice Durham noted at the symposium,² focused on what we must do to improve public service, access to justice, and trust and confidence to bolster support for the courts.³ Even as this note is being drafted, forces invigorated by emerging concepts of social networking and democratic accountability are challenging establishments throughout the Middle East. While these developments may not play out in the United States quite the same as in the Middle East, it is naïve to believe that emerging modes of public engagement and power will be confined to one region of the world. We must recognize, as one of the working groups observed, that “courts are a big business”⁴ with significant reach and influence. They need many of the same things as other businesses—a sense of mission, a coherent management structure, differentiated bureaucracies, staff, programs, support services. But courts are also subject to the same forces impacting other institutions and require continued public support to remain legitimate and influential in the administration of justice. This requires an

The Ten Principles for Court Governance

1. Well-Defined Governance
2. Systemic Input
3. Single Messaging
4. Competent Leadership
5. Commitment to Transparency and Accountability
6. Autonomy in Resource Management
7. Clear Lines of Delegation
8. Open Communications
9. Constructive Institutional Relationships
10. Clearly Defined Relationships for Governance

“Nothing undermines good governance faster than [a] muddled understanding of who is responsible for what.”

Working Group 4 Report

intense examination of whether our current governance structures are sufficiently agile to meet the future. The remainder of this piece will focus on three areas of court governance discussed at the symposium: (1) the necessity for a well-defined governance structure; (2) the value of messaging; and (3) the importance of collaboration. It will conclude with some general observations.

The Need for a Well-Defined Governance Structure

The American court system is unique. In spite of the philosophically aggregate nature of judicial power when it comes to cases,⁵ the administration of the system is highly fragmented, diverse, and compartmentalized. Unlike court governance in many nations where there is a centralized authority overseeing administration, for example a ministry of justice,⁶ our system evidences not only the principles of federalism but also diffuse governance bolstered by a healthy regard for organizational autonomy. The advantage of the system is that many concerns can be handled more nimbly, and locally, because governance is diffused across multiple layers and decision making is not dependent on a highly bureaucratized system that can stifle creativity and innovation. The disadvantage of the system is that this diffusion can make it incredibly challenging for the Third Branch of government to formulate, promulgate, and enforce common policy; balance unified administration and local autonomy; and protect large institutional interests from external forces and internal parochial concerns. Consequently, court leaders at all levels of the system must be cognizant of the need to coordinate administration both horizontally and vertically if the courts are to be treated as a branch of government and not a mere collection of independent operators.

The proposition that state courts need a well-defined governance structure that transcends personality and provincial interests, and is capable of formulating institutional policy, was clearly appreciated by most participants. What is less

clear is how various systems implement an effective governance structure given the multiple and complex relationships resulting from the diffuse administrative constructs in many states. As one small group observed, “[A] well-defined governance structure is good, but implementation is difficult.”⁷ Within the domain of healthy governance structures is also the prerequisite that court leadership should be based on principles of capability, not arbitrary systems of seniority or constant rotation.⁸

Notwithstanding the practical challenges, the need for a coherent governance structure is critical. As noted, courts face an increasingly competitive environment, and this competition extends well beyond the issue of securing adequate resources. While state budgets are pressuring courts to do more with less, the development of external processes for dispute resolution also presents a challenge to court legitimacy as more cases move into private dispute systems, largely in reaction to exploding costs and delay in the traditional court system. To remain pragmatically relevant in mission and purpose, state courts must implement dependable governance processes to address such concerns. Our governance structures must be effective in responding to new challenges and remain sensitive to the diversity of our courts. Implementing a coherent governance structure is a cross-cutting theme.

Speaking as a Branch of Government

Unlike the executive branch, which can formulate and promote a single message, or the legislative branch, which largely does not have to be concerned about such things (chiefly because the adoption of law is ultimately a single message notwithstanding the messy journey it can take), the judiciary sits between two extremes. The structure of courts, from strongly centralized, to strongly decentralized, to some combination of the two, makes it challenging to define

“The messages concerning the interests of the entire judiciary should not be sent with competing messages.”

Working Group 2 Report

and promote coherent institutional messages. There are two important points to be made: First, the issue for courts in a competitive world is not so much about speaking with a single voice as it is about speaking with a single message. As one working group at the symposium observed, “Many people may be empowered to speak, but there should be one message.” Second, the governance structure of a system must be capable of engaging others in developing the message so that “competing messages [do not] cancel each other out.”⁹⁹ In the absence of internal organizational engagement and external organizational discipline, mixed messages emanating from the judiciary will erode both institutional and parochial interests, given their mutual canceling effect.

The structure of many state judicial systems promotes fragmented administration and, therefore, fragmented messaging. Competition between state authorities and local authorities can undermine the institutional standing of courts and portray to the outside world a system based on factions that struggle to maintain organizational coherence. Moreover, the nature of judicial selection and, sometimes, the selection of key court personnel, can lead to a highly individualized environment that challenges the notion of single institutional messaging. Elected officials may see single messaging as detrimental to local concerns, particularly if that message is contrary to a desired outcome. At the same time, these very selection systems can bolster a judiciary’s institutional standing in the public by reinforcing the direct democratic connection between courts and the citizens they serve, a connection that is not dependent on the legislative or executive branches for its legitimacy.

These countervailing forces—the need for institutional messaging balanced against local concerns and the interests of elected officials—can make single messaging challenging but not impossible. This is where a coherent governance structure cuts across many of the issues courts face today. It is extraordinarily difficult to develop single messages in the absence of an internally coherent and externally legitimate governance structure. Indeed, the lack of a coherent governance structure means that the internal management of court issues—be they budget, accountability, or transparency—plays out on a public stage where the courts can appear fragmented, disorganized, and dysfunctional. In an age where the ten-second sound bite can have as much impact on the development and implementation of public policy as months of studious preparation, single messaging on issues of institutional consequence is critical.

“Given the natural constitutional and political tensions that are inherent in our system of government . . . the judiciary must work constantly to explain itself.”

Working Group 4 Report

Building Positive Relationships

Alexander Hamilton (1788) once observed that the executive possessed the power of the sword, the legislature the power of the purse, but the judiciary “It may truly be said to have neither FORCE nor WILL, but merely judgment.” Hamilton’s statement evidenced his belief that the power of the courts lies in the soundness of judgment, which was wholly dependent upon the ability of the courts to maintain the public’s trust and confidence in the administration of justice. Consequently, the judiciary enjoys public legitimacy so long as it can maintain it. The judiciary is different in form and function, and therefore, its legitimacy and relevance depends on building and maintaining positive relationships in three overlapping spheres: (a) with the other branches of government; (b) with the public writ large; and (c) internally within the judiciary.

The importance of maintaining positive institutional relationships that foster trust between branches of government is compelled by a natural tension in the design of American government. While we espouse a strict separation of powers, the fact is that American government is premised upon an allocation of powers across branches of government, thus blurring strict separation. This is a subtle but starkly different manner of distributing public governmental power. Unlike civil-law-tradition systems that adhere to a clearer form of separation of powers, the United States’ government is a system of interlocking powers that inevitably produces tension between the branches of government (Merryman, 1985). Consequently, being able to forge positive working relationships across government is critical in avoiding unnecessary and damaging confrontations. The importance of this effort extends beyond interbranch matters to embrace the public and the internal workings of the system. The public will not support that which it does not understand. And

single messaging and coherent governance requires internal relationships that work toward cooperation and not competition. These three spheres are of equal value and are critical to the principle that the judiciary's legitimacy rests on the credibility of its judgment, and not only in regards to cases.

Conclusion

The Fourth National Symposium focused on a number of emerging issues, not the least of which is this: How effective are our governance systems and how might they have to be adjusted to address the new realities facing state courts? The current fiscal crisis is resulting in budget reductions so deep that they threaten the basic mission of state courts. If we are not careful in understanding that a “new normal” may be developing in regards to resources and public expectations, public support for state courts could decrease. Good governance, sound leadership, proper messaging, public engagement, positive relationships, and a focus on public service can buffer this new normal and reinforce the credibility of courts as a legitimate institution of government. As new forces reshape our world, we would be wise to constantly ask, “Are we doing the best we can and are we structured to meet the new challenges that are inevitably coming?”

ENDNOTES

¹ See Hoffman, 1995. For a list of states whose constitutions contain open-court requirements modeled on those of the Magna Charta, see Buenger, 2009: 593, n. 91.

² Opening Session, Fourth National Symposium, October 27, 2010.

³ Brian Z. Tamanaha (2004) observed, “[E]ven as politicians and development specialists are actively promoting the spread of the rule of law to the rest of the world, legal theorists concur about the marked deterioration of the rule of law in the West.”

⁴ Work Group 3 Report, Fourth National Symposium, October 27, 2010.

⁵ The aggregate nature of judicial power is distinguished from the disaggregate nature of judicial power seen in many other countries. In the U.S., judicial power is not a series of specialized powers but rather integrated into an overarching judicial system. By contrast, judicial power in many other nations is disaggregated into compartmentalized special courts loosely tied together. Interestingly, many of these disaggregated systems, when it comes to the exercise of judicial power, have substantially integrated administrative structures.

⁶ See, e.g., German Federal Ministry of Justice, Directorate General; India Ministry of Law and Justice, Department of Justice; and Supreme Court of Japan, Judicial Assembly.

⁷ Working Group 1 Report, Fourth National Symposium, October 27, 2010.

⁸ Principle 4 asserts that the selection of judicial leadership should be driven primarily by considerations for competence and ability, not seniority or rotation.

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**IT'S A NEW DAY:
FUTURE TRENDS REQUIRE REVOLUTIONARY CHANGES IN COURTS***

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The social, economic, technological, and policy trends shaping the courts since the 1990s, coupled with emerging trends, will require courts to alter their roles more profoundly by 2020 than ever before. Courts must revolutionize how they provide justice services, rethink how they do business, and assertively shape a better future.

Over a decade ago, we wrote that by the late 1990s courts across the nation had:

- created new or greatly expanded divisions and court support programs, such as domestic violence, mental health, drug, and other specialty courts;
- institutionalized family support, litigant assistance, and mediation programs;
- enhanced the use of computer- and telecommunications-based court services; and

- become more effective partners and leaders in rapidly expanding community justice networks composed of jails, defense service organizations, private attorneys, public- and private-treatment and human-service providers, community and public advocates, and law-enforcement and corrections agencies.

However, at that same time, we also stressed that without dramatic changes in the way courts operated, by the year 2010 the key trends shaping the courts during the 2000s could undermine progress and even result in courts moving further away from their essential mission to provide timely and effective resolution of legal matters while promoting respect for the courts and maintaining the independence of the judiciary. In particular we stressed that without substantial change, by 2010 our nation's courts likely would:

- become courts of criminal, family, and what insiders knew to be “quasi-criminal” jurisdiction;
- have increasingly assumed more social- and family-service functions;
- have mandates that far exceeded resources;
- face increasingly precarious funding;
- be challenged by more and more partisan and divisive judge selection often driven by ideology and interest-group-driven politics;
- face challenges to the independence of the judiciary;

Courts must revolutionize how they provide justice services, rethink how they do business, and assertively shape a better future.

Critical Trends for Courts—2010 to 2020

Social/Demographic Trends

- Changing social demographics, including population and workforce aging.
- Alterations in family composition, including declining numbers of traditional families and alterations in the role of societal institutions and community norms and values.
- Polarization of people by class, race, ethnicity, and lifestyle preferences.
- Shifting and mobile population; rapid population growth in some areas and decline in other areas.
- Explosion in the use of social media/social networking as a way to build and maintain relationships, communicate, and do business.

Economic Trends

- Protracted economic recession and slow recovery.
- Increasing stratification between higher/lower incomes.
- People working longer; delaying retirement.
- Greater demands to do business 24/7 (e.g., retail shopping, banking, government services).

- deal with increasing costs per case and increasing numbers of unrepresented litigants;
- face mass retirements, especially of long-term court staff taking advantage of pension programs that they feared would only get worse for newer employees and those who waited too long to retire; and
- face declining morale in the court work place.

Finally, to try to avoid this likely negative future we suggested that courts needed to:

- work closely with local and state justice partners and the community to clarify the appropriate role of the courts relative to the work of executive agencies, service providers, and the many other groups who collectively make-up the justice system;
- redesign internal court work processes and cross-agency work processes to increase service efficiency and quality;
- enhance court governance to improve efficiency;
- implement monitoring systems to report and modify court and justice system performance;
- introduce assertively succession-oriented recruitment and training programs; and
- perfect decentralized service strategies, which emphasize providing services at sites throughout communities.

This article picks up where we left off ten years ago by listing key continuing and emerging trends to 2020 and suggesting several specific actions courts should take to shape a better future.

Key Trends for 2010 to 2020 and Consequences for Courts

Below is a list of trends we believe will have the greatest effect on courts in the coming decade. Some trends continue from the past decade, and others are new and emerging trends to 2020.

The space limitations of this article prohibit a detailed inventory of trends and descriptions of likely future scenarios for courts. However, below are a few of the most significant consequences for courts in the next decade.

1. There will be a widening gap between society's expectations of courts and courts' capacity to meet those expectations.
2. Court users increasingly will be more diverse and have a wide range of changing and evolving needs.
3. Case composition will change, and the complexity of some types of cases will continue to increase.

[Courts must] work closely with local and state justice partners and the community to clarify the appropriate role of the courts relative to the work of executive agencies, service providers, and the many other groups who collectively make-up the justice system.

Critical Trends for Courts—2010 to 2020

Polity and Political Trends

- Increasing scrutiny on how public tax dollars are spent.
- Increasing fragmentation, position polarization, and gridlock among political parties.
- Increasing tension between preserving individual rights and rolling back civil liberties.
- Ongoing tension between increasing expectations for government solutions (e.g., public expects courts to solve many of society's problems) and the call for less government involvement in personal lives (e.g., smoking cessation, obesity, dietary decisions).
- Ongoing debate over health-care reform.
- More tension between local control and need for regionalization of services.
- Continued pressure to help organizations suffering from economic downturn (e.g., airlines, banks/ financial institutions, automobile companies).

4. Pressure will continue to mount to achieve better case outcomes and appropriately supervise and monitor offenders.
5. There will be an increasing demand for culturally appropriate and therapeutic approaches to court and justice services.
6. Courts will have a difficult time keeping pace with and using existing and emerging technologies.
7. It will become increasingly difficult to recruit, hire, and retain highly skilled executives, managers, and staff.
8. Court facilities and infrastructure will continue to decline.
9. Ideology-driven politics and issues will continue to threaten judicial independence, influence perceptions of fairness, and affect the public's trust and confidence in courts.
10. Challenging times could create the right conditions for implementing new innovations and revolutionizing how courts do business and provide services.

In sum, in the absence of court leaders shaping a radically different future, it is plausible that by 2020 the already bleak scenario for 2010 summarized above will

become even more desperate. By 2020 our nation's courts could easily become unable to provide, or increasingly inadequate in providing, effective forums for resolving disputes, protecting the rule of law, and ensuring justice for all.

What Courts *Must* Do as a Result of the Trends

Although shaping a better future will be difficult, below are seven things court leaders can and must do to prepare for and respond to these trends.

1. *Court leaders must jettison the mind-set that we are going through a short-term rough patch and that, in time, things will get better.* History has proven that tough economic and fiscal times eventually improve. Thus, we know that current times also will get better. However, for at least the next decade or so, it is plausible that even if and when the general economic outlook improves, funding for courts will not return to previous levels. Consequently, courts will be required to do both “more with less” and “less with less” in the years ahead.
2. *Courts must reexamine their missions and critically review and align the scope of services they provide.* This strategy requires making difficult choices about the services courts provide. It may mean choosing X service instead of Y service or eliminating some services entirely, especially services that are outside courts' core missions or are secondary or tertiary. Retaining and aligning core and primary services while eliminating secondary or tertiary services is an example of doing “less with less” in the future.

By 2020 our nation's courts could easily become unable to provide, or increasingly inadequate in providing, effective forums for resolving disputes, protecting the rule of law, and ensuring justice for all.

Critical Trends for Courts—2010 to 2020

Technological/Scientific Trends

- Continued rapidly developing information, telecommunications, and networking technology.
- Continuing wireless revolution and use of the Internet.
- Rapid advances in the types of communications and information technology and the cost-effective applications of technologies, especially use of mobile devices.
- Rapidly advancing and cost-effective technologies for distance learning and virtual meetings.
- Continued scientific breakthroughs in nanotechnology, human genetics, robotics, etc.
- Increasing capacity for nano, bio, and electronically enhanced behavior monitoring and modification.

3. *Court leaders must rethink and dramatically alter how courts provide primary services, conduct business, and achieve effective outcomes.* This requires questioning why and how courts do business and radically altering how justice services are provided. No longer will incremental or evolutionary change be enough. Instead, courts need to embrace the following:

- Revolutionize work processes and caseload management practices, such as allowing or using other electronic media, and allowing jurors to select their date of jury service and complete juror orientation online.
- Improve access to services and information using low-cost social media such as Facebook, LinkedIn, Twitter, and YouTube, along with IApps, Skype, and other emerging technologies to conduct core court business, such as answering questions of court users; educating the public; conducting arraignments, hearings, and settlement conferences; training court staff, and monitoring performance.
- Use evidence-based practices and tools to achieve better outcomes and do more with less by targeting services more accurately and monitoring results.

4. *Court organizations must become more nimble, agile, and responsive.* Instead of striving for stability, court leaders must design and build court organizations that can easily and quickly respond and adapt to changing needs and times. This includes implementing more effective and responsive governance structures, strengthening and expediting decision-making practices, adapting policies and procedures to keep pace with changing demands, and fostering a court culture that thrives on experimentation, change, and innovation.

5. *Court leaders must revolutionize their court cultures and work environments.* Court leaders must be pioneers in implementing flexible, effective, and contemporary human-resource approaches and policies and in developing an engaging work environment that will attract, motivate, and retain highly skilled staff. This includes creating flexible work arrangements, investing in career-planning and developmental opportunities, providing horizontal and vertical advancement opportunities, expanding position responsibilities, eliminating narrowly defined job descriptions, retooling skills and abilities, and implementing progressive pay, reward, and incentive practices, such as pay for performance and bonuses.

Courts must reexamine their missions and critically review and align the scope of services they provide.

Critical Trends for Courts—2010 to 2020

Justice System Trends

- Perpetual federal, state, and local funding challenges.
- Aging court infrastructure, especially facilities, security, technology, and equipment.
- Changing demographics and characteristics of court users.
- Continuing demand for justice system transparency and performance accountability.
- Increasing local and state involvement in the enforcement and adjudication of federal policy, such as immigration and health care, and responses to the mortgage-foreclosure crisis.
- Greater expectations and demands for access to information and ability to do business with courts from remote locations (e.g., e-filing, payment of fines and fees, access to case information, video arraignments).
- Continuing politicization of the judiciary and attacks on judicial independence.
- Increase in legislation for specific crimes and unfunded mandates.

Note: Many of the trends listed were also identified in a recent national survey of court managers. Respondents to the survey believe that these trends will continue to shape the next decade for courts.

6. *Courts must expand existing and forge new partnerships.* Courts have a long-standing history of collaborating with partners and the communities they serve. In the future, they must leverage and expand these existing partnerships to include working more closely with regional, national, and even international justice networks.
7. *Court leaders must be even more tenacious in advocating for the needs of the judiciary and courts, communicating accomplishments, and demonstrating accountability.* Being less insular, more transparent, and more direct and forceful about needs and accomplishments are essential to shaping a more favorable future.

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THE HIGH PERFORMANCE COURT FRAMEWORK

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*This article highlights essential aspects of a recent publication by the National Center for State Courts, **Achieving High Performance: A Framework for Courts**. The objective is to summarize the Framework's concepts, identify their practical significance for judges and administrators, and connect the Framework to the larger, continuing trend of court reform.*

What Are Some Key Themes Advanced in the Framework?

Number One: Realistic Assumptions Frame the Discussion of Performance

The Framework is both realistic and positive about the possibilities for improvement. Courts are complex organizations that provide a unique set of services to the public, while being challenged to show they are fair, accessible, timely, and accountable. Balancing these competing values is a high-wire act, especially in lean budgetary times. Improvement and the pursuit of excellence are not easy. However, the Framework is grounded in the sensible belief that all courts can do better. Because no court is excellent in all respects, every court is capable of making positive headway.

More important, most court leaders want to improve their courts' performance. But finding the starting point can be daunting. There is no shortage of available new "management solutions," including managerial approaches, technological applications, and human-resource plans. One problem is that most suggested solutions will not simply plug-and-play in the court environment. Courts offer their own management challenges that must be acknowledged if performance improvements are to take hold.

Consequently, the Framework embraces the notion that there is no single way to the top, or even the next peak. Courts are decentralized, so one size cannot fit all. As a result, the Framework does not assume an ideal or perfect archetype, but instead offers flexible approaches—or managerial ingredients—that can be applied under different circumstances.

In addition, the Framework underscores that the emphasis administrators place on administration is consistent with the legal value of procedural due process adhered to by judges. Procedural due process ensures that appropriate and just procedures are used throughout the court so that people feel they have been treated fairly. While court users may not speak in terms of procedural due process, they want results marked by the same key attributes, including a process that is fair, predictable, timely, and cost-effective. Therefore, the Framework's ingredients should appeal to judges, administrators, and other staff, not just to one of these groups. All court personnel have something to contribute and gain from better ways of doing things.

Number Two: Employee Engagement Is Needed for High Performance

The Framework's concept of how organizations, and certainly courts, become better is by getting everybody involved. Engaged employees at all levels are those who understand and are enthusiastic about their work and will act in a way that furthers the interests of the court and its customers. The suggested managerial ingredients have the greatest chance of success when court personnel trust one another and communicate openly. The goal is to create an environment where ideas are freely shared, a logical approach to establishing priorities exists, and there is a common commitment to orderly, timely, and responsible administration.

Clearly, judges need to be involved, too. The Framework takes into account the deep veins of autonomy and discretion that characterize many professions, including the judiciary. Loosely coupled relationships among judges inhibit current ways of doing business from even being discussed. Without a way to reach collective agreement on possible reforms, any court-wide improvement plans will face considerable uncertainty over the prospect of sustained success.

In response, the Framework focuses on building cohesion and consensus among personnel at all levels by systematically looking at organizational culture and its role in attaining high performance. The prospect for reform is greatly enhanced by diagnosing current cultural beliefs and expectations as a springboard for building the kind of culture best suited for improving long-term performance.

Number Three: High Performance Calls for Collegial Leadership

The Framework sees the roles of the chief judge and court administrator as facilitators of high performance, not autocrats. A top-down approach not only sparks controversy among judges, but is simply unrealistic because judges see themselves as a group of equals. At best, presiding judges are viewed as a first among equals—or an equal among firsts.

What a facilitating chief judge and court administrator can do is increase the span of control and keep a court on the desired and agreed-upon track by enlisting the support of other judges and selected staff in the form of a cadre. A cadre in touch with the tenor of the court leaders' ideas can monitor the ingredients of performance closely and see to it that preferred practices become the norm.

Number Four: High Performance Integrates Multiple Innovations

The Framework synthesizes previous notions about improving courts with new concepts and provides a roadmap and tools for improvement. Readers will find parts of the Framework new and parts familiar, as it brings together many different ideas expressed in print and at conferences. The layout of the Framework encourages court leaders and managers to look at the big picture of the dynamics of court administration, while seeking to solve specific problems in a structured and sequential manner. Problem solving evolves in the form of a quality cycle, which is predicated on a data-driven approach to identify problems and an iterative evaluation of change. What follows is an overview of the basic, yet holistic, set of ingredients that define the High Performance Court Framework.

The High Performance Court Framework: Basic Ingredients

The Framework is intended to clarify what court leaders can do to guide their organizations in the direction of administrative performance consistent with procedural due process. It consists of five key managerial ingredients:

1. **Administrative Principles:** Judges and staff focus on principles that define and support the vision of high administrative performance.
2. **Managerial Culture:** Judges and staff work to build a culture committed to achieving high performance.
3. **Performance Measurement:** A court systematically assesses how successfully it is completing and following through on the goals it seeks to accomplish.
4. **Performance Management:** A court responds to performance results and develops its creative capacity in refining and changing administrative practices.
5. **The Quality Cycle:** A court engages in a dynamic, iterative process linking the four preceding concepts into a chain of action supporting ever-improving performance.

Administrative Principles

The Framework suggests that the character of high-performance administration derives from fundamental values and desired behaviors widely shared among judges and court staff. These values and corresponding behaviors lay out elements to look for in a well-run court. Among these elements are a series of administrative principles.

Every Case Receives Individual Attention. Giving individual attention to cases connotes a tension between each individual case and a judge's caseload and, in fact, an entire court's caseload. Judges know an appropriate amount of time is necessary to make the most correct decisions possible. Well-administered processes allow contending parties and attorneys to provide all relevant information, to present their respective sides of the case, and to respond to any questioning by a judge.

Individual Attention Is Proportional to Need. Judges and court staff must balance the desire to give every case individual attention and the responsibility to honor this desire in a world of substantial caseloads and finite time and resources. One way to reconcile the conflict between "individualized" attention and caseload imperatives is to apply the proportionality proposition, which states that every case should receive individual attention in direct proportion to what it warrants. More

complicated, more serious cases should receive more time than less complex, less serious cases (see Ostrom and Hanson, 1999; Chapper and Hanson, 1983).

Decisions Demonstrate Procedural Justice. Research consistently shows positive experiences are shaped more by court users’ evaluations of how they are treated and whether the process seems fair. The administrative principle of procedural justice deals with the perception of fairness regarding court procedures and outcomes. Perceptions that procedures are fair and understandable influence a host of outcome variables, including satisfaction with the process, respect for the court, and willingness to comply with court rulings and orders—even if individuals do not like the outcome (see Burke and Leben, 2007).

Judges Control the Legal Process. A key development over the past 40 years is caseload management, which blends the processes, techniques, and resources necessary to move a case effectively and efficiently from filing to resolution. A substantial benefit of greater court control over caseload is that it can lead directly to more effective—and cost-effective—advocacy for all litigants. By using effective caseload management policies, the court sets clear expectations for what is expected of attorneys at each event and what a judge will do if the expectations are not met (see Friesen, 1999; Ostrom and Hanson, 1999).

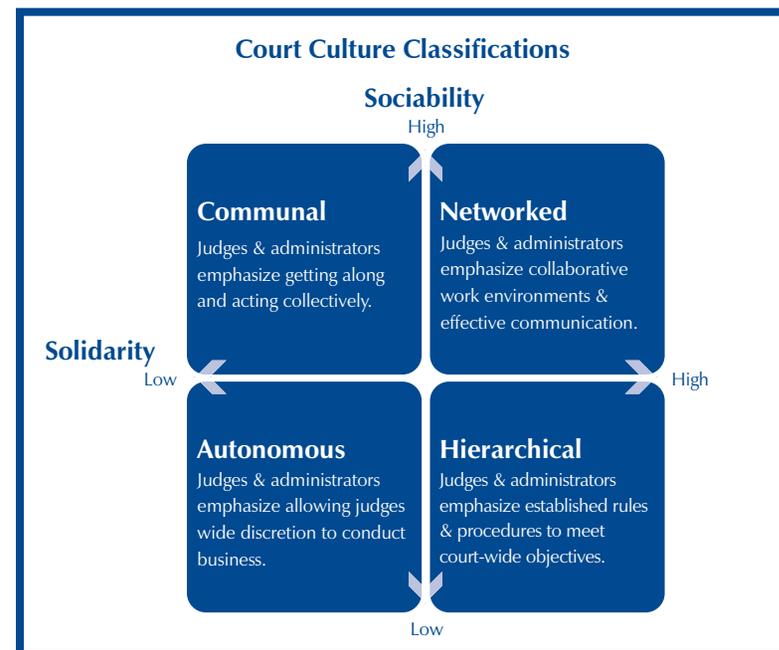
These administrative principles outline a vision of what a well-run court wants to achieve. Actual application of the principles will vary from court to court due to cultural differences.

Managerial Culture

High performance occurs when principles and practices correspond with each other. A key challenge for courts is creating a managerial culture conducive to making high performance an administrative reality. The National Center for State Courts (NCSC) provides a method for understanding court culture and a set of tools and techniques for diagnosing and, when appropriate, changing court culture (see Ostrom et al., 2007).

Following the methodology used successfully to understand managerial culture in the private sector (see Cameron and Quinn, 2006; Quinn and Rohrbaugh, 1983), NCSC research defines court culture as the beliefs and expectations judges and managers have about the way and the degree to which they individually and collectively affect the legal process. A key finding is that the components of court culture fall along two “dimensions.”

The first dimension, solidarity, is the wide spectrum of beliefs on the extent to which it is important for judges and managers to work toward common ends. Solidarity refers to the degree to which a court has clearly understood shared goals, mutual interests, and common tasks. The second dimension, sociability, concerns the wide range of beliefs as to whether it is important for judges and managers to work cooperatively with one another. Sociability refers to the degree to which court personnel acknowledge, communicate, and interact with one another cordially.



NCSC’s approach constructs a classification scheme that systematically produces four distinguishable types of cultures: (1) communal, (2) networked, (3) autonomous, and (4) hierarchical. Each of the four cultures is a particular combination of solidarity and sociability.

An essential lesson learned from field research is that a high degree of solidarity is necessary to support performance initiatives. Hence, a challenge for court leaders is to encourage and facilitate collective decision making among individual judges on what is best for the whole court. As a result, by focusing on solidarity and building consensus, a court can reduce fragmentation and isolation, enabling it to apply the administrative principles.

Performance Measurement and Management

Performance measurement is a data-driven, systematic approach to determining whether and to what degree a court is high performing. High-performance courts are evidence-based in establishing success in meeting the needs and expectations of their constituents. The Framework offers a method of gathering information directly on performance and suggests ways courts can use the information to adjust practices.

Specifically, the use of *CourTools* (see National Center for State Courts, 2010), a common set of ten indicators and methods, is proposed as a method to capture reality in a meaningful and manageable way. The choice and formulation of the ten *CourTools* measures are shaped by three interrelated criteria:

Principles. The measures are aligned with the four administrative principles and help courts evaluate success in key areas such as providing access to justice, reducing delay, and ensuring fairness.

Balance. Achieving a balanced perspective means core performance measures should cover the most important dimensions of court performance and offer meaningful indicators of success in each area. A “balanced scorecard” entails both the idea of balance (e.g., unifying traditional case-processing measures like time to disposition with measures of access, procedural fairness, effective use of jurors, and court employee opinion) and the regular scoring of performance.

Feasibility. Integrating performance measurement into daily operations requires measures that are limited in number, readily interpretable, and durable over time. *CourTools* provides ten vital indicators of court performance that can be applied regularly.

Performance management relates to how a court responds to performance results and refines, updates, and adopts new practices in conjunction with its evolving priorities and changing circumstances. Therefore, a high-performing court is an “administratively activist” body, because it considers the consequences of its administrative practices and adjusts them in light of what it learns.

Quality Cycle

The Framework logically extends performance management to include a series of flexible steps a court can take to integrate and implement ongoing performance improvement. In fact, the Framework forms a functional system that can be called a “quality cycle.” The court administration quality cycle consists of five main steps: determining the scope and content of a problem, gathering information, analyzing, taking action, and evaluating the results.

In many courts, the road to high performance begins with a collegial willingness to see how the four administrative principles are working in practice and to use data to gauge what “working” means. In other words, when a court’s culture supports a commitment to high-quality service, there is ongoing attention to identifying and resolving administrative problems. A clear statement of a specific problem is the first step in organizing a court’s resources to effectively address it.

Collecting relevant data is the next key element of the quality cycle. The scope of assessment is a local option. A court can begin by consulting the Framework’s proposed set of performance areas and accompanying measures to gauge whether reality is consistent with expectations. For example, consider a court that is concerned with a growing backlog of family-law cases. They decide to compile data on time to disposition and age of the active pending caseload in family law, while also conducting an access-and-fairness survey of all litigants involved in the family-law case.

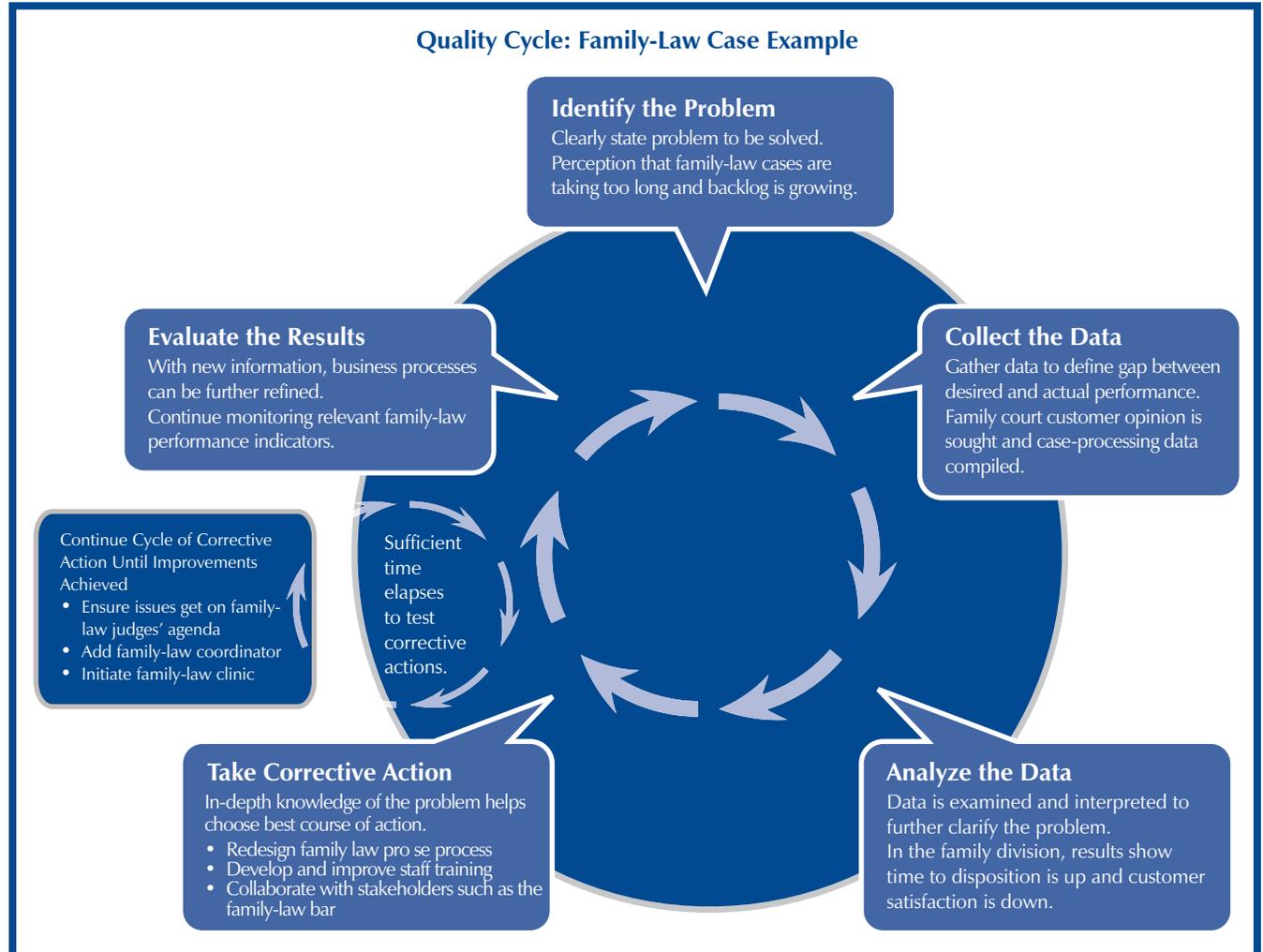
The third step in the cycle is interpreting the results from the data collection and drawing out their implications. Bringing data to bear helps judges, management, and staff to identify more clearly the real causes of the problems and what actions might be taken to solve them. For example, time-to-disposition data might show that family cases fail to meet benchmarks for timely case processing. Further investigation might reveal that many self-represented litigants are not clear on what actions are required to move their cases forward, leading them to feel ill-treated by the court. The result is family cases are taking longer and backlogs are increasing, while litigant—or customer—satisfaction is declining.

This step in the quality cycle is clearly iterative. Once the basic character of a problem is identified, additional information is gathered to further narrow and refine the problem. Court staff might examine data on the number of continuances in family cases, distinguishing whether litigants are pro se and soliciting input from family court judges. Such additional information allows the problem to be more succinctly stated as “family cases involving pro se litigants are continued at a greater rate, delaying these cases and increasing the workload of judges and staff.”

The fourth step in the cycle fuses performance measurement and management. As new information emerges, potential business-process refinements and staff-capability improvements will naturally evolve. For example, with respect to pro se family-law cases, the court might redesign services to provide improved self-help resources in the law library; add a family-law coordinator; build up staff training for those

working with pro se family-law litigants; ensure the issue is on the meeting agenda for the family-law bench; and collaborate with the local family-law bar to develop a legal clinic staffed by pro bono attorneys.

The fifth step involves checking to see whether the solutions have had the intended result. By gathering input from appropriate judges, court staff, and customers



and monitoring the relevant performance indicators, the court determines if the problem is fixed. The goal is not to temporarily change performance numbers, but to achieve real and continuing improvements in the process and in customer satisfaction. For example, a court that has implemented a range of possible solutions for improving family-case processing will want to determine if updated performance-measure data show the problem has been resolved. If data show performance is still unacceptable or not meeting benchmarks, another round of problem assessment is required.

There is no one aspect of performance that must be every court's entry point; rather, the Framework enables courts to address issues that correspond with their particular priorities, needs, and circumstances, all with an eye on higher performance.

Summary

High-performing courts engage in four essential activities regularly:

1. Develop a coherent vision based on a working consensus of guiding principles
2. Assess their strengths and weaknesses in light of evidence
3. Increase performance by refining practices and adopting new ones
4. Disseminate performance results openly and widely to diverse audiences

These activities work because high-performance courts are organized to anticipate challenges, prevent small problems from becoming larger, and learn from experience and data.

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CASE TRIAGE FOR THE 21ST CENTURY

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Differentiated case management was a distinct advance in the effort to reduce court delay. Here the next step in the evolution of case management—a more refined triage based upon issues raised rather than case type, a larger role for litigant choice, and the best use of scarce resources—is previewed.

One observer said, “The Courts have changed more in the last 50 years than any other institution in American Society.”¹ Whether or not that is precisely true, it is unquestioned that the numbers and types of matters litigated have greatly expanded, and courts have accommodated by structural and procedural changes ranging from increased use of alternative dispute resolution to specialized “courts” for a variety of different case types. Has the *conception* of what courts do and how they do it kept pace with changing circumstances? When we think of courts, does not the idea arise of a court using the adversary process to conduct trials in very serious cases? Yet that core function is only a very small part of the business of modern courts. Here we argue for a further refinement of classic case-processing principles by which to assign cases to tracks based upon issues, enable litigant choice, and preserve judge time for trials.

In this article we will pursue the mechanics of case triage in more detail, discussing some historical strategies, some new strategies, and some real examples of courts applying modern ideas of case triage.

Historical Case Triage Strategies

Reducing court delay has been central to 20th-century court reform efforts. Steelman, Goerdt, and McMillan (2000) argue that caseload management is not only a way to reduce delay, but also the “heart of court management.”

Case pressure on courts and judges is steadily increasing over time, requiring courts to process more cases with fewer staff. This trend has been going on now for over three decades and shows little sign of abating.

In the early days of professional court management, case delay was significant and widespread. To combat this problem, court experts developed a set of best practices known as differentiated caseload management (DCM). Thousands of court personnel were trained on these concepts, and such training continues to this day.

It makes sense that cases will languish if nobody pays any attention to them. In an age when case management systems did not routinely produce reports flagging problem cases, such problems could go unattended. So paying attention was the first requirement. Even today, simply having case managers who spend time ensuring that cases move in a timely fashion will improve a court’s performance. This is the basic caseload management tenet of early court intervention and continuous court control of case progress, which results in shorter times to disposition, at least in civil cases (Steelman, Goerdt, and McMillan, 2000: 3; Goerdt, Lomvardias, and Gallas, 1991: 55).

A key feature of DCM is assigning cases to different processing queues, or “tracks,” by case type and complexity. There is often an expedited track for cases that have a modest need for court oversight, a track for “ordinary” contested cases, and a track for complex cases, each with different scheduled events and time frames (Office of Justice Programs, 1995). Obviously, more complex cases require more processing time on average and are more vulnerable to encountering problems and significant delay.

While these ideas seem both obvious and noncontroversial, DCM has been adopted only sporadically and piecemeal in relatively few jurisdictions. Even in those jurisdictions that have adopted DCM, the serious problems that remain have spurred us to seek a more aggressive form of caseload management.

First and foremost, case pressure on courts and judges is steadily increasing over time, requiring courts to process more cases with fewer staff. This trend has been going on now for over three decades and shows little sign of abating. Even courts using DCM to keep pace with increasing caseloads may have difficulty maintaining that equilibrium when future increases in caseload demand even higher productivity.

Second, when DCM was invented, courts lived in a less complex world, with fewer diversion, mediation, and alternative dispute resolution programs. The number of self-represented litigants was small. Neither problem-solving courts nor electronic discovery existed. In short, both the variety of cases and the number of case-processing alternatives have grown significantly. To make matters worse, cases may contain multiple issues that may require shifting from one case-processing strategy and process to another, depending on how the issues manifest themselves. Classic DCM needs to be updated to accommodate these new complexities and to promote ever higher levels of case-processing productivity.

New Case Triage Strategies

The basic principle of case management—*aggressive case management*—will not change. Cases are controlled early and that management continues for the life of the case. The court is not passive, waiting for lawyers to decide what they want to do and when they want to do it, or waiting for self-represented litigants to figure out how to navigate the courts. The refinement is that triage be done earlier in the process, be done more effectively and transparently, and be focused on issues raised rather than type of case considered.

1. Assign Cases Early to One of Four Processing Tracks

Courts determine the most appropriate form of case processing each case deserves. Rather than the three tracks based upon case complexity proposed by DCM, courts should acknowledge at least four types of case-processing queues: 1) the traditional court adversary process; 2) an adversary process modified to handle a high volume of “ordinary” cases; 3) a nonadversary process for cases requiring the solution to a problem; and 4) a nonjudicial process better suited to administrative resolution (see Flango and Clarke, 2011, 2010a, b).

Cases are not initially assigned to one “track” and then retained there for the duration, regardless of how circumstances change. Instead, the court establishes repeatable, consistent, and legally responsible business processes for ensuring cases are handled in the most appropriate and expeditious manner possible.

2. Issue-Based Assignment to Processing Tracks

Triage matches the issues raised with the right adjudicatory processes. This requires that incoming cases be classified *not according to case type*, but according to the *types of issues* they raise and the processing they require. Cases requiring the full adversary process because of the seriousness of the issues raised need to be identified early and assigned to the trial track. This is not much of a change for criminal cases where the state brings the charges and the accused are required to come to court. Triage for those cases will continue to be done by prosecutors who decide on which charges to bring, which to reduce, and which to prosecute to the fullest extent of the law.

3. Litigant Choice

Early intervention starts even before the case is filed and continues throughout the process. Information about case-processing alternatives and historical outcomes should be readily available to both lawyers and self-represented litigants. Electronic filing portals should use TurboTax-like interrogations to elicit basic information necessary to screen and initially assign cases. Early case conferences should be scheduled and decisions on the extent of discovery, motions, and expert witnesses should be established at the outset.

Litigants now make the threshold decision of whether or not to bring civil, traffic, and probate cases to court and should control the process after the case is filed. To do so they need to understand the alternative case-processing tracks available, along with the due-process protections, costs, and legal expertise associated with each

Information about case-processing alternatives and historical outcomes should be readily available to both lawyers and self-represented litigants.

track. A litigant who chose not to contest a case could pay a fine or settlement in full or on a payment schedule, perhaps electronically. Would it be worthwhile for a litigant to reduce the dollar amount in controversy to fit the jurisdiction of a lower court if the result was a quicker resolution? Some principles may be worth fighting for in terms of a more protracted, involved, and costly process; whereas in other cases, litigants may prefer a faster resolution even if it means a smaller award. Why should they not be able to make those choices just like they do in medicine and other spheres of life?

4. Best Use of Resources

Finally, courts should never forget their most defining operating characteristic: Judges, who have the most education and greatest legal expertise, are the most expensive court resource. Courts should do everything they can to maximize other staff resources to perform appropriate tasks, including analyzing the issues in a case and managing the case-processing tracks, much in the same way physicians use physician's assistants and nurse practitioners to treat routine patient complaints.

Many family cases, other than delinquency cases that would be criminal except for the age of the offender, are not "contested" in the same adversary sense other court cases are. Some are more likely to require "diagnosis" of the problem, a joint search for a solution, and perhaps selection among various treatment options. Some may be similar to the civil cases discussed above; for example, a family may choose to compromise over the amount of child support paid if it increased the likelihood that the agreed-upon amount would be paid regularly. Some contain multiple, interrelated issues—such as a divorce proceeding with issues of domestic violence, child custody, and child support—that need to be resolved together. These cases may require early assignment to a mediator or other non-judge professional to narrow the issues to those in dispute, search for compromise, or recommend a course of treatment.

Examples of Successful Case Triage

The strategies discussed above require significant investment in protocols and procedures to develop decision trees appropriate for clerks, paralegals, and staff lawyers, but have shown impressive results in the few places they have been attempted.

Courts should do everything they can to maximize non-judge staff resources to perform appropriate tasks, including analyzing the issues in a case and managing the case-processing tracks.

1. Reducing Jurisdiction

Opposing the trend to adding more and more types of cases to the courts, some courts have curtailed jurisdiction.

One experiment in New York eliminated family-court jurisdiction over status offenses. In 2004 there were at least 159,000 status-offense cases processed in the United States, which is approximately 12 percent of the juvenile dockets of general- and limited-jurisdiction courts.² Status offenses are behaviors that are offenses only because the persons involved are minors and include truancy, curfew violations, and runaways.

2. Litigant Choice

The Maricopa family court decided to put the initial case triage decision in the hands of litigants after providing appropriate guidance via their Web site and court rules. The court discovered that about half of all the family cases required only an entry of decree or judgment by default or consent to dispose, so it decided to use technology in a very innovative way. The Web site began to offer online decree-on-demand and default-on-demand capabilities. Litigants were able to receive the desired court decrees without physically going to the court. Judges produced the decrees more efficiently, and court staff avoided unnecessary appearances and file manipulation. The Web site provided detailed guidance on what case characteristics would qualify a litigant for an online decree.

3. Streamlined Processes

New York City Housing Court has empowered judges to handle their cases with simplified processes in informal settings.³ The lessons for courts facing significant issues with self-represented litigants are instructive. The court permits representation by professionals or family who are not lawyers. Judges use a set

of best practices to ensure that all parties are effectively represented in terms of consistency and fairness during the hearing without acting in unlawful or unconstitutional ways. In addition to relaxed rules of due process and evidence, judges are considering holding virtual hearings.

The Multnomah County civil court has embarked on an ambitious civil reform project to speed up the average processing of civil cases without sacrificing legal quality. An initial case management conference is held within ten days, and a firm trial date is set within four months. The court aggressively manages the parties' discovery plans. A pretrial conference produces stipulations limiting exhibits, expert testimony, and motions. A voluntary expedited track is provided for civil jury trials. A number of other features ensure a significantly speedier, more predictable, and less costly trial process (Multnomah County Circuit Court, 2011).

4. Making Best Use of Scarce Resources

The clerk's office has literally been reinvented in Utah, resulting in a significant reduction in the number of managers. All job descriptions were completely rewritten to emphasize case management and litigant support skills, rather than low-level data-entry and paper-case-file-management abilities. The clerks were reorganized into cross-trained teams better positioned to provide help and move cases forward. The result is impressive. The average clerk is more capable, better educated, and better paid, so more work is accomplished with fewer staff. More important, litigants and judges are better supported.⁴

Implications for Court Organization and Management

If we take these ideas seriously, there are some significant implications for how courts are organized and operated. First, the staffing models may require alteration. Courts may need fewer judges and more lawyers and paralegals. Court clerks may need to have higher skill sets, education levels, and salaries than they do now. Staffing by case type, especially for back-office clerks, may no longer make sense. Case management systems would need to support easy assessment of the status of case issues and include contingencies to support dynamic shifts to other case-processing tracks. Much more information must be both elicited from and provided to litigants at the beginning of their cases for initial placement in the correct case-processing queues.

On the last point, note that what constitutes a "correct" queue depends on not only the court's technical legal analysis, but also the litigants' preferences for tracks based upon their assessment of cost, complexity, timeliness, and due-process requirements. Litigants cannot make these kinds of tradeoffs rationally in the absence of "market" information about these characteristics of case-processing tracks. Many lawyers would also benefit from this type of information, perhaps to the detriment of the few "insiders" who are being compensated for such advice.

These examples of case-processing strategies are encouraging. Many strategies are being pursued by some major courts in some locations, but no single court is pursuing all of them systematically. Thus, it is difficult to assess the total impact on productivity and customer satisfaction that might result if they were employed collectively. It will certainly be interesting to see which courts step up to that challenge and move their case-processing performance to the next level.

ENDNOTES

- ¹ Richard B. McNamara, Memo “Innovation Commission,” June 8, 2010.
- ² Stahl et al., 2007. Percentage is calculated from the National Center for State Courts’ Court Statistics Project. The proportion for the states with unified courts is even higher.
- ³ See Goldin and Casey, 2010. Admittedly, the housing court is not a traditional court, but an administrative law court dealing with a high volume of relatively low stakes cases mostly involving self-represented litigants.
- ⁴ Personal communication, Tim Shea of the Utah AOC, dated June 25, 2010 with an attachment, “Proposed Rules Governing Civil Discovery,” by the Utah Supreme Court Advisory Committee on the Rules of Civil Procedure.

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PRINCIPLES OF JUDICIAL ADMINISTRATION: THE LENS OF CHANGE

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Courts nationwide are making do with fewer resources even in the face of rising caseloads. A set of principles is needed to guide the courts as they restructure their operations in the face of budget challenges.

Changing socioeconomic factors and shifting demands on our judicial institutions require courts to develop solutions that look beyond the short term. To be relevant, courts must provide quality judicial services more efficiently. Court leadership and the legal profession have expressed a strong need for a set of principles to guide them as they seek to restructure court services and secure adequate funding. These principles relate to courts' governance structures, administrative operations, core functions, dispositional alternatives, and funding. These are practical operational principles to assist chief justices and state court administrators—as well as presiding judges and trial court administrators in locally funded jurisdictions—as they address the long-term budget shortfalls and the inevitable restructuring of court services. They are also intended to help members of the legislature and their staffs understand the difficult structural and fiscal decisions required to enable courts to enhance the quality of justice while facing increased caseloads with fewer resources.

HIGH PERFORMANCE COURT

Framework

A Road Map for Improving Court Management

The High Performance Court Framework is intended to clarify what court leaders can do to guide their organizations in the direction of high quality administration and consists of six key concepts designed to improve the daily ongoing work of courts.

The Framework Emphasizes Four Administrative Principles

- Giving every case individual attention
- Treating cases proportionately
- Demonstrating procedural justice
- Exercising judicial control over the legal process

A number of groups have worked independently to develop these guiding principles. Principles relating to effective governance have been developed in conjunction with the National Center for State Courts (NCSC) Harvard Executive Session and the reengineering experience of several states. Case Administration Principles have been completed through the *High Performance Court Framework* (NCSC, 2010). Core Functions and Dispositional Alternatives Principles—defining the mission and core function of courts—have been developed in the context of the budget crisis with the NCSC's Research Division. Finally, Funding Principles have been developed using the Conference of State Court Administrators (COSCA) white papers, the Conference of Chief Justices (CCJ)/COSCA policy resolutions, the *Trial Court Performance Standards* (NCSC, 1990), *CourTools* (NCSC, 2005), and recent NCSC reengineering projects.

These principles are intended to represent a comprehensive yet succinct set of *Principles for Judicial Administration*. While these may be analogous to the *Court Administration Principles* adopted by the American Bar Association (ABA) in the 1970s, they are designed as operational guides to assist courts as they face the challenges of the 21st century. These new principles, which are still in draft form, will continue to be vetted with the court community and the legal community and will be brought to the Conference of Chief Justices and Conference of State Court Administrators for adoption later this year. Nevertheless, they will be refined over time to ensure and maintain their relevance, usefulness, and appropriate application.

There are four sets of principles. The first three address aspects of court administration that form the foundation for pursuing adequate funding: Governance, Case Administration, and Core Functions and Dispositional Alternatives. These are foundational in that courts need to demonstrate that they are effectively managing public resources to pursue and compete successfully for adequate funding. The fourth set contains court-specific Funding Principles, which connect the first three sets of principles. The Funding Principles cannot be successfully implemented if a receptive and supportive governance and organizational infrastructure is absent. There are two parts to the Funding Principles: Developing and Managing the Judicial Budget and Providing Adequate Funding.

Below is a summary of the principles. In the full document each principle is accompanied by commentary to help explain the meaning and uses of each principle. For sake of brevity, this article contains only the specific principles. (These principles are being vetted, and a final version should be available in winter 2012. For the full document with the attendant commentaries, see *Principles of Judicial Administration* at www.ncsc.org.)

Governance Principles

Governance is the means by which an activity is directed to produce the desired outcomes. Court governance flows from one of four basic structural court system models first identified in 1984.

1. **Constellation:** “The state of the judiciary is a loose association of courts which form a system only in the most general of terms . . . [with] numerous trial courts of varying jurisdictions . . . which operate with local rules and procedures at least as important as any statewide prescriptions. . . . Formal lines of authority among the courts are primarily a function of legal processes such as appeals” (Henderson et al., 1984: 35).
2. **Confederation:** “A relatively consolidated court structure and a central authority which exercises limited power. Extensive local discretion. . . . There are clearly defined managerial units at the local level administering the basics of judicial activity” (Henderson et al., 1984: 38).
3. **Federation:** “The trial court structure is relatively complex, but local units are bound together at the state level by a strong, central authority” (Henderson et al., 1984: 41).
4. **Union:** “A fully consolidated, highly centralized system of courts with a single, coherent source of authority. No subordinate court or administrative subunit has independent powers or discretion” (Henderson et al., 1984: 46).

Each model for court organization presents its own distinctive challenges to effective governance. The following principles are set forth as unifying concepts, which can be employed in all existing court organization models. Further, they offer a means for addressing the tension between the self-interest of those working within courts and the organizational culture of the courts. They do not presuppose or advocate for any particular court organization model.

Principle 1: Effective court governance requires a well-defined governance structure for policy formulation and administration for the entire court system.

Principle 2: Judicial leadership should be selected based on competency, not seniority or rotation.

Principle 3: Judicial leaders should demonstrate a commitment to transparency and accountability through the use of performance measures and evaluation at all levels of the organization.

Principle 4: Judicial leaders should focus attention on policy-level issues while clearly delegating administrative duties to staff.

Principle 5: Judicial leadership, whether state or local, should exercise management control over all resources, including staff and funding that support judicial services within their jurisdiction.

Principle 6: The court system should be organized to minimize redundancies in court structures, procedures, and personnel.

Principle 7: The court system should be managed to provide an efficient balance of workload among courts.

Case Administration Principles

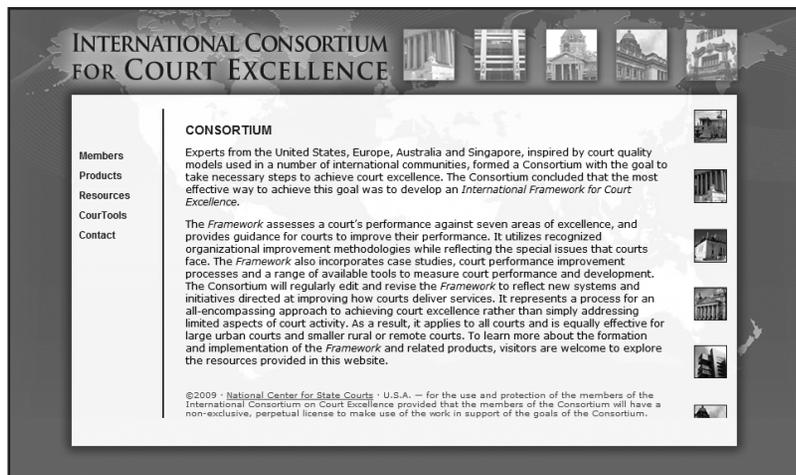
The legal concept of procedural due process and the administrative aspect of efficiency are components of the manner in which courts process cases and interact with litigants. Caseload management is central to the integration of these components into effective judicial administration. Defining quality outcomes is a difficult task, but with the emergence of the *Trial Court Performance Standards* (NCSC, 1990), the *International Framework for Court Excellence* (International Consortium for Court Excellence, 2008; Van Duizend, 2010), and the *High Performance Court Framework* (NCSC, 2010), concepts and values have been developed by which all courts can measure their efficiency and quality via instruments such as *CourTools* (NCSC, 2005). These Case Administration Principles are embedded in and fundamental to these performance management systems.

Principle 8: Judicial officers should give individual attention to each case that comes before them.

Principle 9: The attention judicial officers give to each case should be appropriate to the needs of that case.

Principle 10: Decisions of the court should demonstrate procedural justice.

Principle 11: Judicial officers, with the assistance of court administration, should exercise control over the legal process.



Core Functions and Dispositional Principles

At times of decreasing resources, to handle ever-increasing litigation, both state legislatures and judicial leaders often are forced to examine ways to make the courts more efficient in order to align work with resources. Such inquiries address what truly are the essential functions of courts and what are the most effective means of discharging those functions. Although courts must accept mandated cases, not every case requires the same procedures or disposition process. Over the years, evidence demonstrates that the adversarial process is not the most effective means of resolving all types of disputes. Having a variety of dispositional alternatives

allows the court to fit the forum to the fuss, thus providing better dispositional outcomes while also devoting the appropriate level of resources to the different case types. The following principles acknowledge the core functions of courts and set forth an affirmative process by which courts can assign cases to the most effective dispositional alternatives.

Principle 12: Courts accept and resolve disputes in all cases that are constitutionally or statutorily mandated.

Principle 13: Courts accept cases, quickly evaluate service needs, and through a systematic triage assign the cases to a process suited for speedy and effective resolution.

Principle 14: For cases accepted, courts should make available, within the court system or by referral, alternative dispositional approaches. These approaches include:

- a. The adversarial process
- b. A problem-solving, treatment approach
- c. Mediation or other similar resolution alternative where the disputants maintain greater control over the process
- d. Referral to an appropriate administrative body for determination

Court Funding Principles

As budget requests are prepared by the judiciary and considered by the legislative branch, it is useful to have a set of principles, which can serve as a conceptual framework within which these actions are taken. These principles may be useful for all branches of government when exercising their respective duties and responsibilities regarding judicial budget requests and appropriations.

Developing and Managing the Judicial Budget

For the court system to exist as a preserver of legal norms and as a separate branch of government, it must maintain its institutional integrity while observing mutual civility and respect in its government relations. Courts are necessarily dependent upon the other branches of government; thus, they must clarify, promote, and institutionalize effective working relationships with all branches. Effective court

Courts are necessarily dependent upon the other branches of government; thus, they must clarify, promote, and institutionalize effective working relationships with all branches.

management, together with transparent budget requests supported by well-documented justification, enhances the credibility of the courts and reduces obstacles to securing adequate funding. The following principles are aimed at establishing that credibility, discharging the responsibility of accountability, and maintaining necessary autonomy.

Principle 15: The judicial branch should make budget requests based solely upon demonstrated need supported by appropriate business justification, including the use of workload assessment models and application of appropriate performance measures.

Principle 16: The judicial branch should adopt performance standards with corresponding, relevant performance measures.

Principle 17: Judicial branch budget requests should be considered by the legislature as submitted by the judiciary.

Principle 18: The judicial branch should have the authority to allocate resources with a minimum of legislative and executive branch controls, including budgets that have a minimal number of line items.

Principle 19: The judicial branch should administer funds in accordance with sound, accepted financial management practices.

Providing Adequate Funding

The basic function of the court system is to provide an independent, accessible, responsive forum for the just resolution of disputes to preserve the rule of law and to protect all rights and liberties guaranteed by the Constitution. To fulfill this mission courts must:

- Provide proceedings that are affordable in terms of money, time, and procedures.
- Process cases in a timely manner while keeping current with its incoming caseload.
- Adhere faithfully to relevant laws and procedural rules.
- Provide a reasonable opportunity for litigants to present all necessary and relevant evidence.
- Allow participation by all litigants, witnesses, jurors, and attorneys without undue hardship or inconvenience, including those with language difficulties, physical or mental impairments, or lack of financial resources.
- Provide facilities that are safe, secure, accessible, and convenient to use.
- Make a complete and accurate record of all actions.
- Provide for inclusive and representative juries.

While these broad responsibilities of the courts are clear, it is more difficult to determine the level at which the judicial branch is adequately funded to accomplish these duties. Compounding this issue is the fact that funding for any given court system may vary because of jurisdictional, structural, and operational differences. Principles that address the adequacy of court funding provide a useful context to aid judicial leaders and funders in assessing and addressing their respective budgetary responsibilities and promote development of more stable and adequate funding. Principles focus budget discussions on policy and program issues, as opposed to line-item detail. The set of principles below help define when a court system is adequately funded. Many of these principles can be supported by nationally accepted performance measures or by such measures adopted by the judicial leadership in each state.

Principle 20: Courts should be funded so that cases can be resolved in accordance with recognized time standards by judges and court personnel functioning in accordance with adopted workload standards.

Principle 21: Responsible funding entities should ensure that courts have facilities that are safe, secure, and accessible and which are designed, built, and maintained according to adopted courthouse facilities guidelines.

Principle 22: Courts should be funded to provide for technologies comparable to those used in other governmental agencies and private businesses.

Principle 23: Courts should be funded at a level that allows their core dispute resolution functions to be resolved by applying the appropriate dispositional alternative.

Principle 24: Courts should be funded so that fees are secondary to the general fund as a means of producing revenue for the courts and that the level of fees does not deny reasonable access to dispute resolution services provided by the courts.

As a separate branch of government, courts have the duty to protect citizens' constitutional rights, to provide procedural due process, and to preserve the rule of law. Courts are a cornerstone of our society and provide a core function of government—adjudication of legal disputes. An adequate and stable source of funding is required for courts to execute their constitutional and statutory mandates. While the judiciary is a separate branch of government, it cannot function completely independently. Courts depend upon elected legislative bodies at the state, county, and municipal levels to determine their level of funding. Judicial leaders have the responsibility to demonstrate what funding level is necessary and to establish administrative structures and management processes that demonstrate they are using the taxpayers' money wisely. With these processes as a foundation, principles can be established that guide efforts to define what constitutes adequate funding.

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NCSC SERVICES AND RESOURCES

Social Media and E-Communications

The National Center for State Courts (NCSC) is reaching out to courts, the public, and those interested in the judiciary through a variety of social-media outlets, e-communications, and blogs, all of which allow NCSC to share important, up-to-the-minute information quickly. In addition to its Facebook account, NCSC currently maintains six Twitter accounts, each designed to provide targeted content:

- @statecourts, the main feed for NCSC
- @GaveltoGavel, which provides a weekly review of legislation affecting the courts
- @NCSC_ICM, which features news from the National Center's educational division
- @NCSCIntl, which provides updates from the International Division
- @NCSCLibrary, which contains news from the world's leading collection of judicial administration titles
- @NCSCNewMedia, which follows the impact of new media on the courts



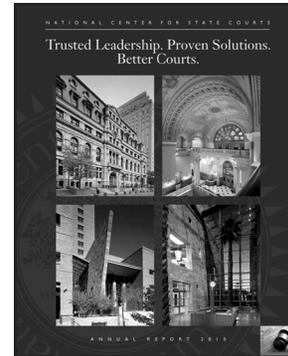
In addition, NCSC offers a number of e-publications that explore issues relevant to state courts.

- @The Center, highlighting NCSC's major projects, publications, and conferences
- *Connected*, exploring how courts use and are affected by new media
- *Federal Funding Report*, providing courts with tips about grants from federal and private funding sources
- *Gavel to Gavel*, reviewing state legislation affecting the courts
- *Jur-E Bulletin*, containing news about jury management
- *NCSC Background*, providing the media and individuals with statistics and facts related to current issues
- *State Courts and the Economy*, offering insight into how state courts are coping with the economic downturn

To subscribe to any of NCSC's e-publications, visit www.ncsc.org/Publications/Newsletters.aspx.

For those interested in regular updates and in-depth information on technology and legislative trends, the National Center offers the Court Technology Bulletin blog, located at <http://courttchbulletin.blogspot.com>, and the Gavel to Gavel blog, located at <http://gaveltogavel.us/site>.

OTHER NCSC RESOURCES



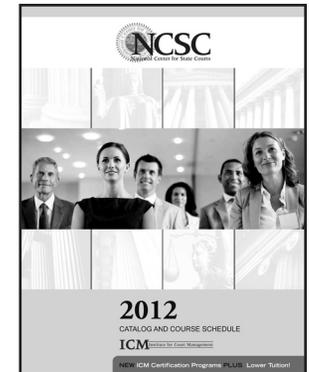
Annual Report 2010: Trusted Leadership. Proven Solutions. Better Courts.

For nearly 40 years, the National Center for State Courts (NCSC) has dedicated its work to providing essential court services and leadership to state courts across the country and around the world. Each year, the NCSC builds, strengthens, and reinforces its services. In 2010, the NCSC organized and hosted the Fourth National Symposium on Court Management, which provided constructive dialogue on how courts can improve their operations and

service to the public. NCSC's 2010 Annual Report reflects on the issues discussed and looks ahead to how the NCSC is helping courts reach their potential.

NCSC's CMP Licensee Program

NCSC's Institute for Court Management, ICM, has developed a Licensee Program for its Court Management Program courses. Through the Licensee Program, ICM offers court associations and court entities a cost-effective opportunity to offer ICM courses locally using qualified court staff from their



state, locality, or association membership. Two levels of certification are available through the Licensee Program. For more information, go to www.ncsc.org, “Education and Careers.”

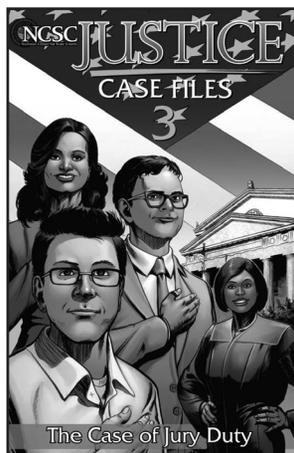
Budget Resource Center



Courts looking for guidance in tough budgetary times can turn to NCSC’s Budget Resource Center at www.ncsc.org/brc. Features include a Google news feed for up-to-date information, links to NCSC publications related to court budgets, an interactive map of state activities regarding budgets, and resources directed toward more specific topics, such as collecting fines and fees.

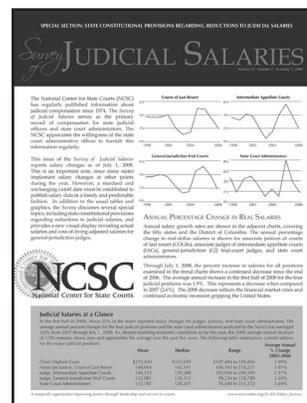
NCSC Graphic Novel Series

Justice Case Files is a series of illustrated novels created by NCSC to educate the public about how our courts work, how judges make decisions, and how courts are accountable to the law. The newest issue in the series, *Justice Case Files 3: The Case of Jury Duty*, follows an 18-year-old called for jury service for a trial about underage drinking and driving. The story lines and content for the series were developed by judges and other legal professionals, and the books were illustrated and published by Layne Morgan Media, an educational graphic novel company. Lesson plans have also been developed for teachers and the courts. For more information, or to order, please contact Lorri Montgomery at NCSC, 757-259-1525, or lmontgomery@ncsc.org.



Judicial Salary Resource Center

NCSC’s Judicial Salary Resource Center provides courts with an online resource for the most up-to-date salary data for judges and court administrators at all levels. State court administrative offices can enter their salary data into the Resource Center directly—as soon as the data are available. The Resource Center also allows users to pull up the specific salary information they need, as well as view the archive of current and past issues of the *Survey of Judicial Salaries*. The Judicial Salary Resource Center is located at www.ncsconline.org/d_kis/salary_survey/home.asp.



Center for Elders and the Courts

The Center for Elders and the Courts (CEC) serves as the primary resource for the judiciary and court management on issues related to aging. CEC strives to increase judicial awareness of issues related to aging, provide training tools and resources to improve court responses to elder abuse and adult guardianships, and develop a collaborative community of judges, court staff, and experts on aging. CEC’s Web site can be found at www.eldersandcourts.org.



ICM Fellows Program

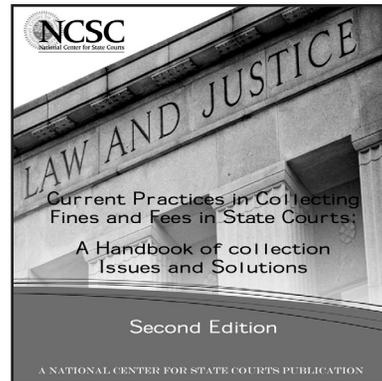
The ICM Fellows Program is the flagship educational program of NCSC’s Institute for Court Management (ICM). The only program of its kind in the United States, the Fellows Program is dedicated to developing the leadership skills of those pursuing a career in court administration. Graduates of this rigorous, four-phase program—which

challenges participants to develop analytical, administrative, and communication skills—earn the distinction of becoming a Fellow of ICM. Certification is often a requirement for upper-management positions in the state courts. For more information, go to www.ncsc.org, “Education and Careers,” “Certification Programs,” “ICM Fellows Program.”

Court Consulting Services

NCSC’s Court Consulting Services group provides direct consulting services to improve the management and operation of state appellate courts and state and local trial courts. We not only work with courts and judges to promote improvement and streamline justice processes, but also provide consulting services to other agencies engaged in state and local justice services, such as probation and community correction departments, as well as cities, counties, and state governments. Court Consulting Services maintains a team of experts in a variety of disciplines, including:

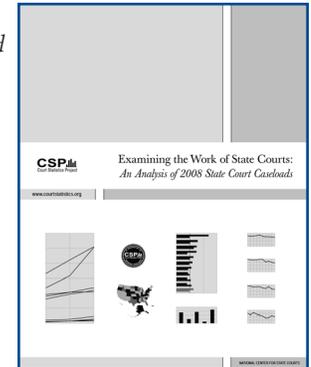
- Children and Families
- Court Facilities
- Court Performance
- Court and Personal Security
- Family and Juvenile Courts
- Financial Reporting and Collections
- High Performance Courts
- Judicial Performance
- Municipal Courts
- Probation
- Problem-Solving Courts
- Process Improvement



To learn more about Court Consulting Services, please check the National Center for State Courts’ Web site at www.ncsc.org, “Services and Experts”; call 800-466-3063; or e-mail Laura Klaversma at lklaversma@ncsc.org.

Online, Interactive Data from the Court Statistics Project

Two of NCSC’s most popular annual publications, *Examining the Work of State Courts* and *State Court Caseload Statistics*, deliver more than the most accessible, up-to-date analysis of caseload trends in the state courts. Online, interactive features now allow users to download the data represented in charts, tables, and graphs and navigate to related reference documents on the Web. Users can also query the Court Statistics Project’s database by state or geographic area, as well as download pdfs of CSP’s latest reports. For more information, go to www.ncsc.org, “Information and Resources” (“Comparing State Courts”).



The Justice System Journal

The National Center for State Courts’ *Justice System Journal* is a refereed, scholarly journal dedicated to judicial administration that features the latest scholarship on topics of interest to judges, such as “alternative” courts, court administration and management, and public perceptions of justice.

Published three times per year; rates are \$40/1 year, \$70/two years (international subscribers, except Canada, should add \$30 for delivery via air mail PMT). For more information and to subscribe, go to www.ncsc.org “Publications.”



NCSC Technology Services

NCSC is dedicated to helping courts make the best and most economical use of the latest technology to improve their operations. Products and services include:



- The Court Technology Framework
- Development of technology standards in cooperation with the Joint Technology Committee, Department of Justice, Department of Homeland Security, and many other justice system partners
- Technical assistance to courts and justice system partners
- Research and information on emerging technologies that may be beneficial to courts
- Technology Vendor List
- Court Technology Bulletin blog
- Technology-consulting services in cooperation with NCSC's Court Consulting Division

For more information, contact technology@ncsc.org.

Court Technology Conference (CTC) 2011

Long Beach, California, October 4-6

CTC brings together more than 1,500 court professionals from across the country and across the world for three days of learning, training, and networking. There simply is no conference on par with CTC that gives you the tools you need to deliver solutions for your court. CTC also features the world's largest court technology exhibit show. For more information, go to www.ctc11.org.



NCSC International

NCSC International serves institutions and organizations worldwide that are seeking innovative solutions to justice system problems. Efforts abroad include reforming and modernizing the justice sector, including:

- Management and administration
- Education and training
- Justice system organizations and governance
- Judicial independence



For more information, go to www.ncscinternational.org.



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